

EXHIBIT 21

**Redacted Version
of Document Sought
to be Sealed**

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF WILLIAM BYATT’S OBJECTIONS AND RESPONSES
TO DEFENDANT’S THIRD SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff William Byatt (“Byatt”) hereby objects and responds to Defendant’s, Google LLC (“Google”), Third Set of Requests for Admission (Nos. 22–29). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Byatt’s knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Byatt may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Byatt reserves all rights to supplement and amend his objections and responses accordingly.

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REQUEST FOR ADMISSION NO. 22:

Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the terms of Google’s then-current TERMS OF SERVICE.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Plaintiff Byatt objects to this Request to the extent it purports to suggest that agreement to Google’s Terms of Service is a necessary predicate for any claim in this litigation (aside from breach of contract). Plaintiff’s allegations relate to Google’s conduct of secretly and unlawfully

1 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
2 browsing activity conducted in private browsing mode, despite Google's representations
3 (including without limitation in the Incognito private browsing mode) that private browsing mode
4 was private and that Plaintiff's (and class members') private browsing information would not be
5 collected by Google. Users did not need any Google account to browse privately, using Incognito
6 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
7 Google accounts in Chrome when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Byatt admits that, when he signed
10 up for his Google Account, although he does not recall the exact details of the then-current Terms
11 of Service, he indicated to Google that he generally agreed to Google's then-current Terms of
12 Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
13 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
14 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
15 collect his private browsing activity, and he did not consent to that interception and collection.
16 Otherwise Denied.

17 **REQUEST FOR ADMISSION NO. 23:**

18 Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the
19 terms of Google's then-current PRIVACY POLICY.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

21 Plaintiff Byatt objects to this Request to the extent it purports to suggest that agreement to
22 Google's Privacy Policy is a necessary predicate for any claim in this litigation (aside from breach
23 of contract). Plaintiff's allegations relate to Google's conduct of secretly and unlawfully
24 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
25 browsing activity conducted in private browsing mode, despite Google's representations
26 (including without limitation in the Incognito private browsing mode) that private browsing mode
27 was private and that Plaintiff's (and class members') private browsing information would not be
28 collected by Google. Users did not need any Google account to browse privately, using Incognito

1 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
2 Google accounts in Chrome when using Chrome's private browsing mode.

3 Notwithstanding and subject to these objections, Plaintiff Byatt admits that, when he signed
4 up for his Google Account, although he does not recall the exact details of the then-current Privacy
5 Policy, he indicated to Google that he generally agreed to Google's then-current Terms of
6 Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
7 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
8 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
9 collect his private browsing activity, and he did not consent to that interception and collection.
10 Otherwise Denied.

11 **REQUEST FOR ADMISSION NO. 24:**

12 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
13 then-current CHROME TERMS OF SERVICE.

14 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

15 Plaintiff Byatt admits that, when he used the Chrome browser, although he does not recall
16 the exact details of the then-current Chrome Terms of Service, he indicated to Google that he
17 generally agreed to Google's then-current Chrome Terms of Service, and he recalls Google's
18 disclosures, including Google's Terms of Service, Privacy Policy, Incognito Screen, and other
19 disclosures promising that Google would not intercept and collect his private browsing activity,
20 and he did not consent to that interception and collection. Otherwise Denied.

21 **REQUEST FOR ADMISSION NO. 25:**

22 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
23 then-current CHROME PRIVACY NOTICE.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

25 Plaintiff Byatt admits that, when he used the Chrome browser, although he does not recall
26 the exact details of the then-current Chrome Privacy Notice, he indicated to Google that he
27 generally agreed to Google's then-current Chrome Privacy Notice, and he recalls the disclosures,
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1 including Google's Terms of Service, Privacy Policy, Incognito Screen, and other disclosures
2 promising that Google would not intercept and collect his private browsing activity, and he did not
3 consent to that interception and collection. Otherwise Denied.

4 **REQUEST FOR ADMISSION NO. 26:**

5 Admit that YOU have never paid any money to Google to use CHROME.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

7 Plaintiff Byatt objects to this Request to the extent it purports to suggest that monetary
8 payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class
9 members provided valuable consideration in the form of their respective personal information they
10 agreed to share with Google in non-private browsing mode, which has ascertainable and
11 demonstrated value by its use and sale by Google. Because Google unlawfully intercepted,
12 collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity
13 conducted in private browsing mode, this private and personally identifiable data and content has
14 been diminished in value, and Plaintiff and class members have been deprived of their right to
15 control the dissemination and use of their respective personal information and communications.

16 Notwithstanding and subject to these objections, Plaintiff Byatt responds that, to the best
17 of his recollection, he has not directly paid any money to Google to use Chrome. Plaintiff has,
18 however, provided valuable consideration in the form of his personal information for the use of
19 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
20 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
21 diminished and Google has used to its benefit to increase its profits and revenues from targeted
22 advertising and improvements of Google's other products. Otherwise denied.

23 **REQUEST FOR ADMISSION NO. 27:**

24 Admit that YOU have never paid any money to Google to use GMAIL.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

26 Plaintiff Byatt objects to this Request as irrelevant, as Gmail is not at issue in this litigation.
27 Plaintiff further objects to this Request to the extent it purports to suggest that monetary payment
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1 to Google is a necessary predicate for any claim in this litigation. Plaintiff and class members
2 provided valuable consideration in the form of their respective personal information they agreed
3 to share with Google in non-private browsing mode, which has ascertainable and demonstrated
4 value by its use and sale by Google. Because Google unlawfully intercepted, collected data from,
5 analyzed, and monetized Plaintiff's (and class members') browsing activity conducted in private
6 browsing mode, this private and personally identifiable data and content has been diminished in
7 value, and Plaintiff and class members have been deprived of their right to control the
8 dissemination and use of their respective personal information and communications.

9
10 Notwithstanding and subject to these objections, Plaintiff Byatt responds that, to the best
11 of his recollection, he has not directly paid any money to Google to use Gmail. Plaintiff has,
12 however, provided valuable consideration in the form of his personal information for the use of
13 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
14 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
15 diminished and Google has used to its benefit to increase its profits and revenues from targeted
16 advertising and improvements of Google's other products. Otherwise denied.

17 **REQUEST FOR ADMISSION NO. 28:**

18 Admit that YOU have never paid any money to Google to use any SERVICES offered by
19 Google.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

21 Plaintiff Byatt objects to the term "Services" insofar as it is irrelevant, vague, and
22 ambiguous, as Google has defined it to include a non-exhaustive list of "Google apps, sites, and
23 devices, like Search, YouTube, and Google Home, Google platforms like the Chrome browser and
24 Android operating system, and Google products that are integrated into third-party apps and sites,
25 like ads and embedded Google Maps." Plaintiff's use of YouTube, Maps, and other irrelevant
26 "services" are not at issue in this litigation. Plaintiff further objects to this Request to the extent it
27 purports to suggest that monetary payment to Google is a necessary predicate for any claim in this
28 litigation. Plaintiff and class members provided valuable consideration in the form of their

1 respective personal information they agreed to share with Google in non-private browsing mode,
2 which has ascertainable and demonstrated value by its use and sale by Google. Because Google
3 unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's (and class
4 members') browsing activity conducted in private browsing mode, this private and personally
5 identifiable data and content has been diminished in value, and Plaintiff and class members have
6 been deprived of their right to control the dissemination and use of their respective personal
7 information and communications.

8
9 Notwithstanding and subject to these objections, Plaintiff Byatt responds that, to the best
10 of his recollection, he has paid to Google approximately [REDACTED] per month for Google One (since
11 approximately [REDACTED]), [REDACTED] per month for YouTube Premium (since approximately [REDACTED]
12 as a Google Play Music subscriber, which was converted into a YouTube premium subscription in
13 approximately [REDACTED]), and approximately [REDACTED] per month for Google Fi (since
14 approximately [REDACTED]). Additionally, Plaintiff has provided valuable consideration in the
15 form of his personal information for the use of Google products, but Google unlawfully
16 intercepted, collected data from, analyzed, and monetized Plaintiff's browsing activity conducted
17 in private browsing mode, the value of which has been diminished and Google has used to its
18 benefit to increase its profits and revenues from targeted advertising and improvements of
19 Google's other products. Otherwise denied.

20 **REQUEST FOR ADMISSION NO. 29:**

21 Admit that in YOUR GOOGLE ACCOUNT WEB & APP ACTIVITY SETTINGS, YOU
22 consented to Google saving information about your activity on sites that use Google services in
23 Your Google Account.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

25 Plaintiff Byatt objects to this Request as irrelevant, as Web & App Activity is not at issue
26 in this litigation. Otherwise denied.
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1 Dated: July 30, 2021

MORGAN & MORGAN

2 /s/ John A. Yanchunis

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28 *Attorneys for Plaintiffs*

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On July 30, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Third Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on July 30, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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24 *Attorneys for Defendant*

25 Executed on July 30, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 22

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF CHRISTOPHER CASTILLO’S OBJECTIONS AND RESPONSES
TO DEFENDANT’S THIRD SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff Christopher Castillo (“Castillo”) hereby objects and responds to Defendant’s, Google LLC (“Google”), Third Set of Requests for Admission (Nos. 22–29). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Castillo’s knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Castillo may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Castillo reserves all rights to supplement and amend his objections and responses accordingly.

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REQUEST FOR ADMISSION NO. 22:

Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the terms of Google’s then-current TERMS OF SERVICE.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Plaintiff Castillo objects to this Request to the extent it purports to suggest that agreement to Google’s Terms of Service is a necessary predicate for any claim in this litigation (aside from breach of contract). Plaintiff’s allegations relate to Google’s conduct of secretly and unlawfully

1 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
2 browsing activity conducted in private browsing mode, despite Google's representations
3 (including without limitation in the Incognito private browsing mode) that private browsing mode
4 was private and that Plaintiff's (and class members') private browsing information would not be
5 collected by Google. Users did not need any Google account to browse privately, using Incognito
6 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
7 Google accounts in Chrome when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Castillo admits that, when he
10 signed up for his Google Account, although he does not recall the exact details of the then-current
11 Terms of Service, he indicated to Google that he generally agreed to Google's then-current Terms
12 of Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
13 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
14 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
15 collect his private browsing activity, and he did not consent to that interception and collection.
16 Otherwise Denied.

17 **REQUEST FOR ADMISSION NO. 23:**

18 Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the
19 terms of Google's then-current PRIVACY POLICY.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

21 Plaintiff Castillo objects to this Request to the extent it purports to suggest that agreement
22 to Google's Privacy Policy is a necessary predicate for any claim in this litigation (aside from
23 breach of contract). Plaintiff's allegations relate to Google's conduct of secretly and unlawfully
24 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
25 browsing activity conducted in private browsing mode, despite Google's representations
26 (including without limitation in the Incognito private browsing mode) that private browsing mode
27 was private and that Plaintiff's (and class members') private browsing information would not be
28 collected by Google. Users did not need any Google account to browse privately, using Incognito

1 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
2 Google accounts in Chrome when using Chrome's private browsing mode.

3 Notwithstanding and subject to these objections, Plaintiff Castillo admits that, when he
4 signed up for his Google Account, although he does not recall the exact details of the then-current
5 Privacy Policy, he indicated to Google that he generally agreed to Google's then-current Terms of
6 Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
7 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
8 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
9 collect his private browsing activity, and he did not consent to that interception and collection.
10 Otherwise Denied.

11 **REQUEST FOR ADMISSION NO. 24:**

12 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
13 then-current CHROME TERMS OF SERVICE.

14 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

15 Plaintiff Castillo admits that, when he used the Chrome browser, although he does not
16 recall the exact details of the then-current Chrome Terms of Service, he indicated to Google that
17 he generally agreed to Google's then-current Chrome Terms of Service, and he recalls Google's
18 disclosures, including Google's Terms of Service, Privacy Policy, Incognito Screen, and other
19 disclosures promising that Google would not intercept and collect his private browsing activity,
20 and he did not consent to that interception and collection. Otherwise Denied.

21 **REQUEST FOR ADMISSION NO. 25:**

22 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
23 then-current CHROME PRIVACY NOTICE.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

25 Plaintiff Castillo admits that, when he used the Chrome browser, although he does not
26 recall the exact details of the then-current Chrome Privacy Notice, he indicated to Google that he
27 generally agreed to Google's then-current Chrome Privacy Notice, and he recalls the disclosures,
28

1 including Google's Terms of Service, Privacy Policy, Incognito Screen, and other disclosures
2 promising that Google would not intercept and collect his private browsing activity, and he did not
3 consent to that interception and collection. Otherwise Denied.

4 **REQUEST FOR ADMISSION NO. 26:**

5 Admit that YOU have never paid any money to Google to use CHROME.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

7 Plaintiff Castillo objects to this Request to the extent it purports to suggest that monetary
8 payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class
9 members provided valuable consideration in the form of their respective personal information they
10 agreed to share with Google in non-private browsing mode, which has ascertainable and
11 demonstrated value by its use and sale by Google. Because Google unlawfully intercepted,
12 collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity
13 conducted in private browsing mode, this private and personally identifiable data and content has
14 been diminished in value, and Plaintiff and class members have been deprived of their right to
15 control the dissemination and use of their respective personal information and communications.

16 Notwithstanding and subject to these objections, Plaintiff Castillo responds that, to the best
17 of his recollection, he has not directly paid any money to Google to use Chrome. Plaintiff has,
18 however, provided valuable consideration in the form of his personal information for the use of
19 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
20 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
21 diminished and Google has used to its benefit to increase its profits and revenues from targeted
22 advertising and improvements of Google's other products. Otherwise denied.

23 **REQUEST FOR ADMISSION NO. 27:**

24 Admit that YOU have never paid any money to Google to use GMAIL.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

26 Plaintiff Castillo objects to this Request as irrelevant, as Gmail is not at issue in this
27 litigation. Plaintiff further objects to this Request to the extent it purports to suggest that monetary
28

1 payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class
2 members provided valuable consideration in the form of their respective personal information they
3 agreed to share with Google in non-private browsing mode, which has ascertainable and
4 demonstrated value by its use and sale by Google. Because Google unlawfully intercepted,
5 collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity
6 conducted in private browsing mode, this private and personally identifiable data and content has
7 been diminished in value, and Plaintiff and class members have been deprived of their right to
8 control the dissemination and use of their respective personal information and communications.

9
10 Notwithstanding and subject to these objections, Plaintiff Castillo responds that, to the best
11 of his recollection, he has not directly paid any money to Google to use Gmail. Plaintiff has,
12 however, provided valuable consideration in the form of his personal information for the use of
13 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
14 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
15 diminished and Google has used to its benefit to increase its profits and revenues from targeted
16 advertising and improvements of Google's other products. Otherwise denied.

17 **REQUEST FOR ADMISSION NO. 28:**

18 Admit that YOU have never paid any money to Google to use any SERVICES offered by
19 Google.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

21 Plaintiff Castillo objects to the term "Services" insofar as it is irrelevant, vague, and
22 ambiguous, as Google has defined it to include a non-exhaustive list of "Google apps, sites, and
23 devices, like Search, YouTube, and Google Home, Google platforms like the Chrome browser and
24 Android operating system, and Google products that are integrated into third-party apps and sites,
25 like ads and embedded Google Maps." Plaintiff's use of YouTube, Maps, and other irrelevant
26 "services" are not at issue in this litigation. Plaintiff further objects to this Request to the extent it
27 purports to suggest that monetary payment to Google is a necessary predicate for any claim in this
28 litigation. Plaintiff and class members provided valuable consideration in the form of their

1 respective personal information they agreed to share with Google in non-private browsing mode,
2 which has ascertainable and demonstrated value by its use and sale by Google. Because Google
3 unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's (and class
4 members') browsing activity conducted in private browsing mode, this private and personally
5 identifiable data and content has been diminished in value, and Plaintiff and class members have
6 been deprived of their right to control the dissemination and use of their respective personal
7 information and communications.

8
9 Notwithstanding and subject to these objections, Plaintiff Castillo responds that, to the best
10 of his recollection, he has not directly paid any money to Google to use services offered by Google.
11 Plaintiff has, however, provided valuable consideration in the form of his personal information for
12 the use of Google products, but Google unlawfully intercepted, collected data from, analyzed, and
13 monetized Plaintiff's browsing activity conducted in private browsing mode, the value of which
14 has been diminished and Google has used to its benefit to increase its profits and revenues from
15 targeted advertising and improvements of Google's other products. Otherwise denied.

16 **REQUEST FOR ADMISSION NO. 29:**

17 Admit that in YOUR GOOGLE ACCOUNT WEB & APP ACTIVITY SETTINGS, YOU
18 consented to Google saving information about your activity on sites that use Google services in
19 Your Google Account.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

21 Plaintiff Castillo objects to this Request as irrelevant, as Web & App Activity is not at issue
22 in this litigation. Otherwise denied.
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Dated: July 30, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Ryan J. McGee (*pro hac vice*)
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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On July 30, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Third Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on July 30, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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24 *Attorneys for Defendant*

25 Executed on July 30, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 23

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF JEREMY DAVIS' OBJECTIONS AND RESPONSES
TO DEFENDANT'S THIRD SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff Jeremy Davis ("Davis") hereby objects and responds to Defendant's, Google LLC ("Google"), Third Set of Requests for Admission (Nos. 22–29). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Davis' knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Davis may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Davis reserves all rights to supplement and amend his objections and responses accordingly.

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REQUEST FOR ADMISSION NO. 22:

Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the terms of Google's then-current TERMS OF SERVICE.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Plaintiff Davis objects to this Request to the extent it purports to suggest that agreement to Google's Terms of Service is a necessary predicate for any claim in this litigation (aside from breach of contract). Plaintiff's allegations relate to Google's conduct of secretly and unlawfully

1 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
2 browsing activity conducted in private browsing mode, despite Google's representations
3 (including without limitation in the Incognito private browsing mode) that private browsing mode
4 was private and that Plaintiff's (and class members') private browsing information would not be
5 collected by Google. Users did not need any Google account to browse privately, using Incognito
6 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
7 Google accounts in Chrome when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Davis admits that, when he
10 signed up for his Google Account, although he does not recall the exact details of the then-current
11 Terms of Service, he indicated to Google that he generally agreed to Google's then-current Terms
12 of Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
13 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
14 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
15 collect his private browsing activity, and he did not consent to that interception and collection.
16 Otherwise Denied.

17 **REQUEST FOR ADMISSION NO. 23:**

18 Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the
19 terms of Google's then-current PRIVACY POLICY.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

21 Plaintiff Davis objects to this Request to the extent it purports to suggest that agreement to
22 Google's Privacy Policy is a necessary predicate for any claim in this litigation (aside from breach
23 of contract). Plaintiff's allegations relate to Google's conduct of secretly and unlawfully
24 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
25 browsing activity conducted in private browsing mode, despite Google's representations
26 (including without limitation in the Incognito private browsing mode) that private browsing mode
27 was private and that Plaintiff's (and class members') private browsing information would not be
28 collected by Google. Users did not need any Google account to browse privately, using Incognito

1 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
2 Google accounts in Chrome when using Chrome's private browsing mode.

3 Notwithstanding and subject to these objections, Plaintiff Davis admits that, when he
4 signed up for his Google Account, although he does not recall the exact details of the then-current
5 Privacy Policy, he indicated to Google that he generally agreed to Google's then-current Terms of
6 Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
7 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
8 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
9 collect his private browsing activity, and he did not consent to that interception and collection.
10 Otherwise Denied.

11 **REQUEST FOR ADMISSION NO. 24:**

12 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
13 then-current CHROME TERMS OF SERVICE.

14 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

15 Plaintiff Davis admits that, when he used the Chrome browser, although he does not recall
16 the exact details of the then-current Chrome Terms of Service, he indicated to Google that he
17 generally agreed to Google's then-current Chrome Terms of Service, and he recalls Google's
18 disclosures, including Google's Terms of Service, Privacy Policy, Incognito Screen, and other
19 disclosures promising that Google would not intercept and collect his private browsing activity,
20 and he did not consent to that interception and collection. Otherwise Denied.

21 **REQUEST FOR ADMISSION NO. 25:**

22 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
23 then-current CHROME PRIVACY NOTICE.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

25 Plaintiff Davis admits that, when he used the Chrome browser, although he does not recall
26 the exact details of the then-current Chrome Privacy Notice, he indicated to Google that he
27 generally agreed to Google's then-current Chrome Privacy Notice, and he recalls the disclosures,
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1 including Google's Terms of Service, Privacy Policy, Incognito Screen, and other disclosures
2 promising that Google would not intercept and collect his private browsing activity, and he did not
3 consent to that interception and collection. Otherwise Denied.

4 **REQUEST FOR ADMISSION NO. 26:**

5 Admit that YOU have never paid any money to Google to use CHROME.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

7 Plaintiff Davis objects to this Request to the extent it purports to suggest that monetary
8 payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class
9 members provided valuable consideration in the form of their respective personal information they
10 agreed to share with Google in non-private browsing mode, which has ascertainable and
11 demonstrated value by its use and sale by Google. Because Google unlawfully intercepted,
12 collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity
13 conducted in private browsing mode, this private and personally identifiable data and content has
14 been diminished in value, and Plaintiff and class members have been deprived of their right to
15 control the dissemination and use of their respective personal information and communications.

16 Notwithstanding and subject to these objections, Plaintiff Davis responds that, to the best
17 of his recollection, he has not directly paid any money to Google to use Chrome. Plaintiff has,
18 however, provided valuable consideration in the form of his personal information for the use of
19 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
20 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
21 diminished and Google has used to its benefit to increase its profits and revenues from targeted
22 advertising and improvements of Google's other products. Otherwise denied.

23 **REQUEST FOR ADMISSION NO. 27:**

24 Admit that YOU have never paid any money to Google to use GMAIL.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

26 Plaintiff Davis objects to this Request as irrelevant, as Gmail is not at issue in this litigation.
27 Plaintiff further objects to this Request to the extent it purports to suggest that monetary payment
28

1 to Google is a necessary predicate for any claim in this litigation. Plaintiff and class members
2 provided valuable consideration in the form of their respective personal information they agreed
3 to share with Google in non-private browsing mode, which has ascertainable and demonstrated
4 value by its use and sale by Google. Because Google unlawfully intercepted, collected data from,
5 analyzed, and monetized Plaintiff's (and class members') browsing activity conducted in private
6 browsing mode, this private and personally identifiable data and content has been diminished in
7 value, and Plaintiff and class members have been deprived of their right to control the
8 dissemination and use of their respective personal information and communications.

9
10 Notwithstanding and subject to these objections, Plaintiff Davis responds that, to the best
11 of his recollection, he has not directly paid any money to Google to use Gmail. Plaintiff has,
12 however, provided valuable consideration in the form of his personal information for the use of
13 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
14 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
15 diminished and Google has used to its benefit to increase its profits and revenues from targeted
16 advertising and improvements of Google's other products. Otherwise denied.

17 **REQUEST FOR ADMISSION NO. 28:**

18 Admit that YOU have never paid any money to Google to use any SERVICES offered by
19 Google.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

21 Plaintiff Davis objects to the term "Services" insofar as it is irrelevant, vague, and
22 ambiguous, as Google has defined it to include a non-exhaustive list of "Google apps, sites, and
23 devices, like Search, YouTube, and Google Home, Google platforms like the Chrome browser and
24 Android operating system, and Google products that are integrated into third-party apps and sites,
25 like ads and embedded Google Maps." Plaintiff's use of YouTube, Maps, and other irrelevant
26 "services" are not at issue in this litigation. Plaintiff further objects to this Request to the extent it
27 purports to suggest that monetary payment to Google is a necessary predicate for any claim in this
28 litigation. Plaintiff and class members provided valuable consideration in the form of their

1 respective personal information they agreed to share with Google in non-private browsing mode,
2 which has ascertainable and demonstrated value by its use and sale by Google. Because Google
3 unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's (and class
4 members') browsing activity conducted in private browsing mode, this private and personally
5 identifiable data and content has been diminished in value, and Plaintiff and class members have
6 been deprived of their right to control the dissemination and use of their respective personal
7 information and communications.

8
9 Notwithstanding and subject to these objections, Plaintiff Davis responds that, to the best
10 of his recollection, he has not directly paid any money to Google to use services offered by Google.
11 Plaintiff has, however, provided valuable consideration in the form of his personal information for
12 the use of Google products, but Google unlawfully intercepted, collected data from, analyzed, and
13 monetized Plaintiff's browsing activity conducted in private browsing mode, the value of which
14 has been diminished and Google has used to its benefit to increase its profits and revenues from
15 targeted advertising and improvements of Google's other products. Otherwise denied.

16 **REQUEST FOR ADMISSION NO. 29:**

17 Admit that in YOUR GOOGLE ACCOUNT WEB & APP ACTIVITY SETTINGS, YOU
18 consented to Google saving information about your activity on sites that use Google services in
19 Your Google Account.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

21 Plaintiff Davis objects to this Request as irrelevant, as Web & App Activity is not at issue
22 in this litigation. Otherwise denied.
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Dated: July 30, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On July 30, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Third Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on July 30, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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24 *Attorneys for Defendant*

25 Executed on July 30, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 24

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF MONIQUE TRUJILLO'S OBJECTIONS AND RESPONSES
TO DEFENDANT'S THIRD SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff Monique Trujillo ("Trujillo") hereby objects and responds to Defendant's, Google LLC ("Google"), Third Set of Requests for Admission (Nos. 22–29). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Trujillo's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Trujillo may become aware of additional facts or evidence and her analysis of the case may change. Plaintiff Trujillo reserves all rights to supplement and amend her objections and responses accordingly.

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REQUEST FOR ADMISSION NO. 22:

Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the terms of Google's then-current TERMS OF SERVICE.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Plaintiff Trujillo objects to this Request to the extent it purports to suggest that agreement to Google's Terms of Service is a necessary predicate for any claim in this litigation (aside from breach of contract). Plaintiff's allegations relate to Google's conduct of secretly and unlawfully

1 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
2 browsing activity conducted in private browsing mode, despite Google's representations
3 (including without limitation in the Incognito private browsing mode) that private browsing mode
4 was private and that Plaintiff's (and class members') private browsing information would not be
5 collected by Google. Users did not need any Google account to browse privately, using Incognito
6 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
7 Google accounts in Chrome when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Trujillo admits that, when she
10 signed up for her Google Account, although she does not recall the exact details of the then-current
11 Terms of Service, she indicated to Google that she generally agreed to Google's then-current
12 Terms of Service—which incorporates the Google Chrome and Chrome OS Additional Terms of
13 Service, the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page,
14 and the Incognito Screen—and she recalls the disclosures promising that Google would not
15 intercept and collect her private browsing activity, and she did not consent to that interception and
16 collection. Otherwise Denied.

17 **REQUEST FOR ADMISSION NO. 23:**

18 Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the
19 terms of Google's then-current PRIVACY POLICY.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

21 Plaintiff Trujillo objects to this Request to the extent it purports to suggest that agreement
22 to Google's Privacy Policy is a necessary predicate for any claim in this litigation (aside from
23 breach of contract). Plaintiff's allegations relate to Google's conduct of secretly and unlawfully
24 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
25 browsing activity conducted in private browsing mode, despite Google's representations
26 (including without limitation in the Incognito private browsing mode) that private browsing mode
27 was private and that Plaintiff's (and class members') private browsing information would not be
28 collected by Google. Users did not need any Google account to browse privately, using Incognito

1 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
2 Google accounts in Chrome when using Chrome's private browsing mode.

3 Notwithstanding and subject to these objections, Plaintiff Trujillo admits that, when she
4 signed up for her Google Account, although she does not recall the exact details of the then-current
5 Privacy Policy, she indicated to Google that she generally agreed to Google's then-current Terms
6 of Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
7 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
8 Incognito Screen—and she recalls the disclosures promising that Google would not intercept and
9 collect her private browsing activity, and she did not consent to that interception and collection.
10 Otherwise Denied.

11 **REQUEST FOR ADMISSION NO. 24:**

12 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
13 then-current CHROME TERMS OF SERVICE.

14 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

15 Plaintiff Trujillo admits that, when she used the Chrome browser, although she does not
16 recall the exact details of the then-current Chrome Terms of Service, she indicated to Google that
17 she generally agreed to Google's then-current Chrome Terms of Service, and she recalls Google's
18 disclosures, including Google's Terms of Service, Privacy Policy, Incognito Screen, and other
19 disclosures promising that Google would not intercept and collect her private browsing activity,
20 and she did not consent to that interception and collection. Otherwise Denied.

21 **REQUEST FOR ADMISSION NO. 25:**

22 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
23 then-current CHROME PRIVACY NOTICE.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

25 Plaintiff Trujillo admits that, when she used the Chrome browser, although she does not
26 recall the exact details of the then-current Chrome Privacy Notice, she indicated to Google that
27 she generally agreed to Google's then-current Chrome Privacy Notice, and she recalls the
28

1 disclosures, including Google's Terms of Service, Privacy Policy, Incognito Screen, and other
2 disclosures promising that Google would not intercept and collect her private browsing activity,
3 and she did not consent to that interception and collection. Otherwise Denied.

4 **REQUEST FOR ADMISSION NO. 26:**

5 Admit that YOU have never paid any money to Google to use CHROME.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

7 Plaintiff Trujillo objects to this Request to the extent it purports to suggest that monetary
8 payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class
9 members provided valuable consideration in the form of their respective personal information they
10 agreed to share with Google in non-private browsing mode, which has ascertainable and
11 demonstrated value by its use and sale by Google. Because Google unlawfully intercepted,
12 collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity
13 conducted in private browsing mode, this private and personally identifiable data and content has
14 been diminished in value, and Plaintiff and class members have been deprived of their right to
15 control the dissemination and use of their respective personal information and communications.

16 Notwithstanding and subject to these objections, Plaintiff Trujillo responds that, to the best
17 of her recollection, she has not directly paid any money to Google to use Chrome. Plaintiff has,
18 however, provided valuable consideration in the form of her personal information for the use of
19 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
20 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
21 diminished and Google has used to its benefit to increase its profits and revenues from targeted
22 advertising and improvements of Google's other products. Otherwise denied.

23 **REQUEST FOR ADMISSION NO. 27:**

24 Admit that YOU have never paid any money to Google to use GMAIL.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

26 Plaintiff Trujillo objects to this Request as irrelevant, as Gmail is not at issue in this
27 litigation. Plaintiff further objects to this Request to the extent it purports to suggest that monetary
28

1 payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class
2 members provided valuable consideration in the form of their respective personal information they
3 agreed to share with Google in non-private browsing mode, which has ascertainable and
4 demonstrated value by its use and sale by Google. Because Google unlawfully intercepted,
5 collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity
6 conducted in private browsing mode, this private and personally identifiable data and content has
7 been diminished in value, and Plaintiff and class members have been deprived of their right to
8 control the dissemination and use of their respective personal information and communications.

9
10 Notwithstanding and subject to these objections, Plaintiff Trujillo responds that, to the best
11 of her recollection, she has not directly paid any money to Google to use Gmail. Plaintiff has,
12 however, provided valuable consideration in the form of her personal information for the use of
13 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
14 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
15 diminished and Google has used to its benefit to increase its profits and revenues from targeted
16 advertising and improvements of Google's other products. Otherwise denied.

17 **REQUEST FOR ADMISSION NO. 28:**

18 Admit that YOU have never paid any money to Google to use any SERVICES offered by
19 Google.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

21 Plaintiff Trujillo objects to the term "Services" insofar as it is irrelevant, vague, and
22 ambiguous, as Google has defined it to include a non-exhaustive list of "Google apps, sites, and
23 devices, like Search, YouTube, and Google Home, Google platforms like the Chrome browser and
24 Android operating system, and Google products that are integrated into third-party apps and sites,
25 like ads and embedded Google Maps." Plaintiff's use of YouTube, Maps, and other irrelevant
26 "services" are not at issue in this litigation. Plaintiff further objects to this Request to the extent it
27 purports to suggest that monetary payment to Google is a necessary predicate for any claim in this
28 litigation. Plaintiff and class members provided valuable consideration in the form of their

1 respective personal information they agreed to share with Google in non-private browsing mode,
2 which has ascertainable and demonstrated value by its use and sale by Google. Because Google
3 unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's (and class
4 members') browsing activity conducted in private browsing mode, this private and personally
5 identifiable data and content has been diminished in value, and Plaintiff and class members have
6 been deprived of their right to control the dissemination and use of their respective personal
7 information and communications.

8 Notwithstanding and subject to these objections, Plaintiff Trujillo responds that, to the best
9 of her recollection, she has not directly paid any money to Google to use services offered by
10 Google. Plaintiff has, however, provided valuable consideration in the form of her personal
11 information for the use of Google products, but Google unlawfully intercepted, collected data
12 from, analyzed, and monetized Plaintiff's browsing activity conducted in private browsing mode,
13 the value of which has been diminished and Google has used to its benefit to increase its profits
14 and revenues from targeted advertising and improvements of Google's other products. Otherwise
15 denied.

16 **REQUEST FOR ADMISSION NO. 29:**

17 Admit that in YOUR GOOGLE ACCOUNT WEB & APP ACTIVITY SETTINGS, YOU
18 consented to Google saving information about your activity on sites that use Google services in
19 Your Google Account.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

21 Plaintiff Trujillo objects to this Request as irrelevant, as Web & App Activity is not at issue
22 in this litigation. Otherwise denied.
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Dated: July 30, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On July 30, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Third Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on July 30, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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25 Executed on July 30, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
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EXHIBIT 25

**Redacted Version
of Document Sought
to be Sealed**

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

4 CHASOM BROWN, WILLIAM BYATT,
5 JEREMY DAVIS, CHRISTOPHER
6 CASTILLO, and MONIQUE TRUJILLO,
7 individually and on behalf of
8 all other similarly situated

9 Plaintiffs, CASE NO.
10 5:20-CV-03664-LHK-SVK
11 VS.

12 GOOGLE LLC

13 Defendant.

14 *****
15 ZOOM VIDEOTAPED DEPOSITION OF WILLIAM BYATT
16 December 20, 2021
17 11:04 a.m. EST
18 *****

19 TAKEN BY:
20 VIOLA TREBICKA, ESQ.
21 ATTORNEY FOR DEFENDANT

22 REPORTED BY:
23 BELLE VIVIENNE, CRR
24 CERTIFIED STENOGRAPHIC
25 REALTIME COURT REPORTER
VERITEXT LEGAL SOLUTIONS
JOB NO. 5001125
866 299-5127

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1 Q. Good morning, Mr. Byatt. 11:06:42	1 my behavior and activity while I am 11:08:35
2 A. Good morning. 11:06:45	2 browsing the Internet or using, you know, 11:08:40
3 Q. Could you please state your full 11:06:45	3 web software, won't be shared with anyone 11:08:44
4 name for the record? 11:06:47	4 that I don't want it shared with. It will 11:08:48
5 A. My name is William Joshua Byatt. 11:06:47	5 be private to me. 11:08:50
6 Q. And what is your home address? 11:06:52	6 Q. So -- so your understanding of 11:08:56
7 A. [REDACTED], 11:06:54	7 private browsing is that it won't be 11:08:59
8 [REDACTED]. 11:06:59	8 shared with anyone that you don't want it 11:09:02
9 I did recently move like last week. 11:07:04	9 shared with, correct? 11:09:04
10 Q. All right. Okay. 11:07:06	10 MR. LEE: Objection to form. 11:09:06
11 On your computer screen, do you 11:07:10	11 A. Yes, that -- that is my 11:09:09
12 have any communication applications open 11:07:11	12 understanding. That I have control over 11:09:11
13 other than Zoom? 11:07:14	13 who it's shared with and -- and that -- 11:09:14
14 A. I have Zoom and I have the 11:07:15	14 that -- yeah, that -- that it's limited to 11:09:18
15 Exhibit Share. That's it. 11:07:20	15 who I sort of affirm that it's going to -- 11:09:20
16 Q. Excellent. 11:07:23	16 to be shared with, yeah. 11:09:24
17 Do you have your phone nearby 11:07:25	17 BY MS. TREBICKA: 11:09:24
18 too? 11:07:27	18 Q. And what's your understanding of 11:09:24
19 A. I do, but it's been turned off. 11:07:28	19 how you affirm this consent to share your 11:09:25
20 Q. Perfect, thank you. Have you 11:07:31	20 information? 11:09:30
21 ever had your deposition taken before? 11:07:33	21 A. I think that I -- pardon me -- 11:09:33
22 A. No. 11:07:35	22 agree to share information when I accept 11:09:39
23 Q. So let me just start with some 11:07:36	23 various terms of service or privacy 11:09:47
24 questions. At any point in time if you 11:07:41	24 policies. I think that in the case of -- 11:09:50
25 have a question about what I'm asking you, 11:07:44	25 I mean, I do most of my browsing on 11:09:55
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1 if you don't understand something, just 11:07:46	1 Chrome, so when I think about private 11:09:59
2 let me know. I will be asking you 11:07:47	2 browsing, I think about the Incognito 11:10:01
3 questions. Your counsel, who is in the 11:07:49	3 modem, that little splash screen that 11:10:06
4 room with you -- well, let me take a step 11:07:52	4 comes up and tells me what I'm sharing and 11:10:08
5 back and say, you are represented today, 11:07:55	5 opening Incognito is agreeing to that 11:10:10
6 correct? 11:07:58	6 splash screen. 11:10:15
7 A. Yes. 11:07:58	7 Q. So if you're aware that your 11:10:17
8 Q. And Mr. Lee is your counsel? 11:07:58	8 information is being shared with a 11:10:18
9 A. Yes. 11:08:01	9 particular party and you continue to 11:10:20
10 Q. If -- one -- while I am asking 11:08:01	10 browse so that your information is shared, 11:10:24
11 you questions, there may be a moment in 11:08:03	11 that means that you understand your 11:10:26
12 which Mr. Lee may object to my question. 11:08:07	12 information will be shared, correct? 11:10:29
13 Unless Mr. Lee instructs you not to 11:08:11	13 MR. LEE: Objection to form. 11:10:32
14 answer, you will answer my question to the 11:08:14	14 A. I -- I'm -- I'm not sure I 11:10:34
15 best of your ability. Do you understand 11:08:16	15 understood that question. Could you -- 11:10:36
16 that? 11:08:18	16 BY MS. TREBICKA: 11:10:36
17 A. I do, yeah. 11:08:19	17 Q. That was -- you're right. That 11:10:37
18 Q. And you also under -- you also 11:08:20	18 was not a very good question. Let me 11:10:39
19 understand that you are under oath today, 11:08:22	19 withdraw it and ask you -- so you 11:10:41
20 correct? 11:08:24	20 mentioned Incognito browsing, right? 11:10:43
21 A. I do. 11:08:24	21 A. Uh-huh. 11:10:47
22 Q. Great. So, Mr. Byatt, what do 11:08:25	22 Q. What do you understand -- and, 11:10:47
23 you understand by the term "private 11:08:29	23 sorry. Just one more thing, because the 11:10:47
24 browsing"? 11:08:30	24 court reporter will be taking down 11:10:50
25 A. I understand that to mean that 11:08:32	25 everything that we say, while in common 11:10:52
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<p>1 speech, it -- it's all right and I 11:10:56</p> <p>2 understand what you mean when you say 11:10:59</p> <p>3 uh-huh or something that's not verbal. 11:11:01</p> <p>4 Please do verbalize your answers for the 11:11:04</p> <p>5 court reporter. 11:11:07</p> <p>6 A. I may require reminders, but 11:11:07</p> <p>7 I'll certainly try. 11:11:10</p> <p>8 Q. I will remind you. 11:11:11</p> <p>9 So you -- earlier you talked 11:11:12</p> <p>10 about private -- about Incognito, correct? 11:11:14</p> <p>11 A. I did, yes. 11:11:19</p> <p>12 Q. So you do browsing in Incognito, 11:11:20</p> <p>13 correct? 11:11:22</p> <p>14 A. Yes. 11:11:22</p> <p>15 Q. Do you continue to browse in 11:11:23</p> <p>16 Incognito today? 11:11:25</p> <p>17 A. Occasionally, yes. 11:11:25</p> <p>18 Q. How often, presently, how often 11:11:28</p> <p>19 do you browse? 11:11:32</p> <p>20 A. That I wouldn't be able to tell 11:11:33</p> <p>21 you. I don't particularly keep track. 11:11:36</p> <p>22 Certainly -- yeah, I don't think I could 11:11:40</p> <p>23 say with specificity. It comes in fits 11:11:46</p> <p>24 and bursts. You know, sometimes I might 11:11:49</p> <p>25 spend several hours browsing multiple days 11:11:52</p> <p style="text-align: right;">Page 14</p>	<p>1 my attorneys -- 11:13:08</p> <p>2 MR. LEE: Hold on. Hold on. 11:13:09</p> <p>3 So let me just give you a quick 11:13:11</p> <p>4 instruction. It is -- in these 11:13:14</p> <p>5 depositions, you should not reveal any 11:13:16</p> <p>6 communications you've had with your 11:13:18</p> <p>7 attorneys. 11:13:20</p> <p>8 THE WITNESS: Okay. 11:13:20</p> <p>9 MR. LEE: So if you can answer 11:13:21</p> <p>10 this question without revealing any 11:13:22</p> <p>11 communications that you've had with 11:13:23</p> <p>12 any of your attorneys, happy for you 11:13:24</p> <p>13 to do that; if you can't, then don't 11:13:29</p> <p>14 answer the question. 11:13:30</p> <p>15 THE WITNESS: Okay. 11:13:31</p> <p>16 A. But, yeah. So it -- it has 11:13:32</p> <p>17 seemed as though continuing to behave as 11:13:33</p> <p>18 normally as possible until the end of the 11:13:37</p> <p>19 lawsuit is what would make the most sense. 11:13:40</p> <p>20 BY MS. TREBICKA: 11:13:40</p> <p>21 Q. And what do you understand by 11:13:46</p> <p>22 the term "Incognito browsing"? 11:13:47</p> <p>23 A. I understand it to mean -- well, 11:13:51</p> <p>24 first of all, what Google tells me it 11:13:53</p> <p>25 means when I open it and there's this 11:13:56</p> <p style="text-align: right;">Page 16</p>
<p>1 in a week and sometimes I might go weeks 11:11:58</p> <p>2 without opening it. 11:12:01</p> <p>3 Q. And when you say "it," you mean 11:12:02</p> <p>4 Incognito? 11:12:04</p> <p>5 A. I mean Incognito, yes. 11:12:05</p> <p>6 Q. Understood. Have you changed 11:12:06</p> <p>7 your browsing behavior on Incognito since 11:12:07</p> <p>8 the filing of this lawsuit? 11:12:10</p> <p>9 A. I have wanted to. I may have 11:12:12</p> <p>10 some, but I felt that it would be best to 11:12:16</p> <p>11 try to continue my behavior as sort of 11:12:20</p> <p>12 normally as possible. I'm not sure how 11:12:24</p> <p>13 effective that is with sort of the -- the 11:12:29</p> <p>14 awareness and thinking about this more. 11:12:34</p> <p>15 But it's been -- it's been roughly pretty 11:12:35</p> <p>16 similar. 11:12:40</p> <p>17 Q. You say you -- that you have 11:12:40</p> <p>18 tried to -- or you said that you -- it 11:12:43</p> <p>19 would be best to try to continue your 11:12:47</p> <p>20 behavior as normal. 11:12:48</p> <p>21 What do you mean by that? 11:12:51</p> <p>22 A. Yeah. So when -- when this 11:12:52</p> <p>23 lawsuit is over, I will probably quit 11:12:53</p> <p>24 using Chrome altogether, but I have felt 11:12:58</p> <p>25 that for -- you know, I've been advised by 11:13:03</p> <p style="text-align: right;">Page 15</p>	<p>1 splash screen, I understand it to mean 11:13:59</p> <p>2 that my information is -- that -- that my 11:14:02</p> <p>3 browsing information is going to be 11:14:07</p> <p>4 private, that it's not going to be 11:14:10</p> <p>5 recorded by Google, that it is, you know, 11:14:12</p> <p>6 a level of affirmative anonymity when I am 11:14:18</p> <p>7 browsing. 11:14:26</p> <p>8 Q. You used the term affirmative 11:14:34</p> <p>9 and anonymity, correct? 11:14:37</p> <p>10 A. I did, yes. 11:14:39</p> <p>11 Q. And "anonymity" means someone 11:14:40</p> <p>12 not knowing your identity, correct? 11:14:42</p> <p>13 A. Or my behavior, things that can 11:14:45</p> <p>14 be used to identify things that are -- are 11:14:47</p> <p>15 just things that I'm doing that are -- 11:14:51</p> <p>16 that are me, that are my behavior and that 11:14:53</p> <p>17 I might not want shared. 11:14:56</p> <p>18 Q. Okay. And by that, you 11:14:58</p> <p>19 understand things that are linked to you 11:14:59</p> <p>20 as an individual, correct? 11:15:00</p> <p>21 MR. LEE: Objection to form. 11:15:03</p> <p>22 A. Things that are linked to me as 11:15:05</p> <p>23 an individual or my behavior, my property, 11:15:07</p> <p>24 things that I own, you know, my Internet 11:15:12</p> <p>25 connections, things like that, yep. 11:15:15</p> <p style="text-align: right;">Page 17</p>

<p>1 A. I -- I -- I am, first of all, 11:19:10</p> <p>2 not 100 percent certain. I am, by no 11:19:15</p> <p>3 means, you know, an expert in -- I don't 11:19:18</p> <p>4 know personally identifiable information 11:19:22</p> <p>5 or how those systems work, but I would 11:19:24</p> <p>6 think that, information that is about me, 11:19:28</p> <p>7 that is what I'm doing, is not anonymous 11:19:37</p> <p>8 if -- if they know that I'm doing 11:19:44</p> <p>9 something or that my property or my 11:19:46</p> <p>10 computers or my Internet connections are 11:19:49</p> <p>11 doing something, that I -- that doesn't 11:19:50</p> <p>12 seem anonymous. 11:19:53</p> <p>13 BY MS. TREBICKA: 11:19:53</p> <p>14 Q. And it's fair to say, Mr. Byatt, 11:20:14</p> <p>15 that maintaining the privacy of your 11:20:16</p> <p>16 information is important to you while 11:20:18</p> <p>17 you're browsing the Internet? 11:20:19</p> <p>18 A. Yes. You know, I do voluntarily 11:20:21</p> <p>19 share information at times. So it's not, 11:20:28</p> <p>20 you know an absolute at all times. But I 11:20:34</p> <p>21 think, you know, sort of perhaps more than 11:20:37</p> <p>22 privacy, which is important, is consent to 11:20:40</p> <p>23 what information is being shared. I want 11:20:44</p> <p>24 to know with what of my information is 11:20:46</p> <p>25 being shared and I want to agree to that 11:20:48</p> <p style="text-align: right;">Page 22</p>	<p>1 cognizant of what I am consenting to 11:22:06</p> <p>2 share, yeah. 11:22:09</p> <p>3 Q. When you browse the web, are you 11:22:11</p> <p>4 generally aware that websites display ads? 11:22:32</p> <p>5 A. Yes, certainly. 11:22:37</p> <p>6 Q. You've seen those ads, right? 11:22:38</p> <p>7 A. Yeah. I've definitely seen ads, 11:22:40</p> <p>8 yeah. 11:22:42</p> <p>9 Q. Do you ever click on the ads? 11:22:43</p> <p>10 A. I do. 11:22:45</p> <p>11 Q. Do you get some value out of 11:22:46</p> <p>12 clicking out of some ads? 11:22:48</p> <p>13 A. I do, yeah. 11:22:50</p> <p>14 Q. What's the value that you get? 11:22:51</p> <p>15 Tell me about it. 11:22:53</p> <p>16 A. I -- I enjoy getting new 11:22:55</p> <p>17 products and services that I maybe hadn't 11:23:02</p> <p>18 been aware of. I think finding, you know, 11:23:04</p> <p>19 new brands or new information or new 11:23:08</p> <p>20 content that -- that appeals to me is 11:23:12</p> <p>21 nice. 11:23:14</p> <p>22 Q. What else do you like about 11:23:14</p> <p>23 seeing those ads? 11:23:16</p> <p>24 A. I don't know. That -- sometimes 11:23:22</p> <p>25 the ads are for sales. I like sales. 11:23:25</p> <p style="text-align: right;">Page 24</p>
<p>1 information being shared. 11:20:50</p> <p>2 Q. How -- what steps do you take to 11:20:55</p> <p>3 know that certain information is -- about 11:20:58</p> <p>4 you is being shared when you browse? 11:21:00</p> <p>5 A. I -- as a -- as a rule, I tend 11:21:03</p> <p>6 to read, you know, privacy policies, terms 11:21:06</p> <p>7 of service, things like that. I -- I 11:21:10</p> <p>8 actually think about when -- when a 11:21:14</p> <p>9 website asks me what they can track or 11:21:17</p> <p>10 what they're going to put on my computer, 11:21:20</p> <p>11 I do think about what was, you know, 11:21:24</p> <p>12 default to hitting okay all the time. 11:21:27</p> <p>13 So -- so yeah, I think it's -- 11:21:30</p> <p>14 it's -- you know, that sort of thing, 11:21:33</p> <p>15 paying attention to what is being 11:21:34</p> <p>16 represented to me as being shared and 11:21:36</p> <p>17 thinking about whether or not I want that 11:21:38</p> <p>18 shared. 11:21:40</p> <p>19 Q. And do you -- would you agree 11:21:49</p> <p>20 that you take careful precautions to 11:21:50</p> <p>21 protect your privacy online? 11:21:53</p> <p>22 A. I wouldn't use the word 11:21:55</p> <p>23 "careful" or -- I'm not even sure I would 11:21:56</p> <p>24 use the word necessarily "precautions." I 11:22:01</p> <p>25 would say that I am aware of and -- and 11:22:03</p> <p style="text-align: right;">Page 23</p>	<p>1 Q. Who doesn't? 11:23:28</p> <p>2 A. Yeah. 11:23:29</p> <p>3 Q. And you're also aware that 11:23:44</p> <p>4 websites also use certain services to 11:23:46</p> <p>5 display those ads, right? 11:23:47</p> <p>6 A. I am, yes. 11:23:50</p> <p>7 Q. In other words, The New York 11:23:51</p> <p>8 Times -- do you frequent The New York 11:23:53</p> <p>9 Times? 11:23:56</p> <p>10 A. I do. I visit The New York 11:23:56</p> <p>11 Times. I don't know if there's 11:23:58</p> <p>12 distinctions around the word "frequent," 11:23:59</p> <p>13 but I definitely visit and go to The New 11:24:01</p> <p>14 York Times website, yeah. 11:24:05</p> <p>15 Q. That was an unnecessarily fancy 11:24:05</p> <p>16 word on my part. We can agree then that 11:24:09</p> <p>17 you visit The New York Times website 11:24:11</p> <p>18 online? 11:24:12</p> <p>19 A. Yes, absolutely. 11:24:13</p> <p>20 Q. And you see that The New York 11:24:14</p> <p>21 Times sometimes displays ads to you when 11:24:16</p> <p>22 you visit, correct? 11:24:18</p> <p>23 A. I do, yeah. 11:24:19</p> <p>24 Q. And you understand that those 11:24:20</p> <p>25 ads may be powered by entities other than 11:24:21</p> <p style="text-align: right;">Page 25</p>

1 The New York Times, right? 11:24:24	1 is not in Incognito mode or in 11:26:36
2 A. I understand that some of them 11:24:27	2 Incognito mode or both? 11:26:38
3 may be, yes. 11:24:28	3 MS. TREBICKA: I'm speaking 11:26:40
4 Q. And you understand that some of 11:24:30	4 generally here about Mr. Byatt 11:26:41
5 them may be powered by Google? 11:24:31	5 visiting the web. 11:26:44
6 A. Yes. Well, let me just say that 11:24:34	6 MR. LEE: I don't know what that 11:26:46
7 I -- I can't say specifically whether I 11:24:38	7 means. Mr. Byatt visits the Internet 11:26:47
8 know that to be true for The New York 11:24:40	8 in non-Incognito mode and in Incognito 11:26:52
9 Times. You know, I know that The New York 11:24:42	9 mode. So when you say generally, I 11:26:55
10 Times sells ads directly so I don't know. 11:24:46	10 don't know what that means. 11:26:57
11 I can't, you know, specifically recall 11:24:50	11 MS. TREBICKA: Well, why don't 11:26:59
12 having seen Google-powered ads on The New 11:24:52	12 we ask Mr. Byatt. 11:27:00
13 York Times, but I do know that happens in 11:24:55	13 BY MS. TREBICKA: 11:27:00
14 general. 11:24:58	14 Q. Mr. Byatt, do you need the 11:27:01
15 Q. Right. So you said that you 11:24:59	15 question read back to you? 11:27:04
16 know that New York Times sells ads 11:25:00	16 A. At this point, I would love it 11:27:07
17 directly. Tell me about -- tell me what 11:25:02	17 read back to me. 11:27:08
18 you know about any web publisher selling 11:25:05	18 Q. I can do that. Generally 11:27:10
19 ads on their websites? 11:25:11	19 speaking on the web, you understand that 11:27:12
20 A. Not a lot. I know that for some 11:25:13	20 there are certain advertisements that may 11:27:13
21 of those web publishers, you can pay them 11:25:18	21 be shown on the basis of certain 11:27:15
22 to put up advertising images and copy like 11:25:24	22 characteristics that the advertisers or 11:27:17
23 old school newspapers, you know. Yeah, I 11:25:27	23 the website knows about the user; is that 11:27:20
24 don't know too much about the details of 11:25:31	24 right? 11:27:23
25 those processes. 11:25:34	25 MR. LEE: Objection to form. 11:27:24
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1 Q. And -- and do you also 11:25:36	1 A. Yeah. In the -- in the broad 11:27:25
2 understand that the ads that are shown may 11:25:37	2 sense, I do know that that is certainly 11:27:27
3 depend on information that The New York 11:25:41	3 something that happens, yes. 11:27:29
4 Times may know about you? For example, 11:25:43	4 BY MS. TREBICKA: 11:27:29
5 you know, what websites you visited before 11:25:46	5 Q. You mentioned earlier that you 11:27:55
6 The New York Times? 11:25:47	6 also try to review or generally review 11:27:58
7 A. Well, I -- I can't speculate as 11:25:49	7 privacy policies of the websites that you 11:28:03
8 to, you know, targeting implementations at 11:25:51	8 go to. Do you recall that testimony? 11:28:05
9 The New York Times, but I certainly 11:25:55	9 A. I do, yes. 11:28:07
10 understand that that kind of thing is of 11:25:58	10 Q. And The New York Times is a 11:28:08
11 value to advertisers. Advertisers want to 11:26:02	11 website that you sometimes visit; is that 11:28:11
12 do that. I have no idea if New York Times 11:26:06	12 right? 11:28:13
13 specifically is doing that. 11:26:08	13 A. It is. 11:28:14
14 Q. I don't mean to limit it to The 11:26:09	14 Q. Is Twitter another of those 11:28:14
15 New York Times specifically. 11:26:16	15 websites that you sometimes visit? 11:28:17
16 A. Yeah. 11:26:16	16 A. Yes. 11:28:18
17 Q. Generally speaking on the web, 11:26:16	17 Q. Is it fair to say that you've 11:28:21
18 you understand that there's advertisement 11:26:18	18 read their privacy policies? 11:28:23
19 that's shown and that it may also be shown 11:26:20	19 A. I'm certain that I have, yes. 11:28:25
20 on the basis of certain characteristics 11:26:25	20 Yeah, I'm sure I have. 11:28:28
21 that they know about the users who those 11:26:28	21 Q. Do you recall when? 11:28:31
22 ads are displayed to? 11:26:30	22 A. No, not with specificity. I 11:28:34
23 A. Yeah -- 11:26:32	23 certainly would have read the Twitter 11:28:37
24 MR. LEE: Hold on. Are these 11:26:32	24 privacy policy at minimum when I created a 11:28:41
25 questions directed towards when a user 11:26:35	25 Twitter account, although I don't remember 11:28:44
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1 when that would have been. I suppose the 11:28:46	1 let him know that when you mark a 11:31:03
2 same would probably be true for The New 11:28:48	2 deposition exhibit, it should show up 11:31:05
3 York Times. I do recall having seen The 11:28:53	3 in his Exhibit Share, which he, I 11:31:07
4 New York Times, the little GDPR notice 11:28:59	4 believe he has up on his -- on his 11:31:11
5 that comes up a few times, you know, 11:29:03	5 computer. And if you hit refresh, I 11:31:18
6 pretty frequently, but more details and 11:29:05	6 think that what's been marked as 11:31:22
7 dates, I couldn't -- I couldn't tell you. 11:29:08	7 Exhibit 1 should -- should be visible 11:31:24
8 Q. Would you be able to narrow it 11:29:12	8 to you, Mr. Byatt. 11:31:26
9 down to a range for me? Let's start with 11:29:13	9 THE WITNESS: I see it now. 11:31:27
10 The New York Times when you may have 11:29:16	10 MR. LEE: I encourage you to 11:31:28
11 reviewed the privacy policy, a date range? 11:29:18	11 open them and make sure that they work 11:31:30
12 A. Yeah, I probably could figure it 11:29:24	12 and you're able to read them before we 11:31:33
13 out with time, but, no, I -- I wouldn't be 11:29:29	13 move on. 11:31:35
14 able to remember. Yeah, I've been -- I've 11:29:31	14 (Exhibit 1, Screenshot, marked 11:31:35
15 been -- you know, on the Internet for as 11:29:34	15 for identification.) 11:31:38
16 long as I can remember. So I certainly 11:29:37	16 THE WITNESS: I have opened it 11:31:38
17 couldn't remember when I first started 11:29:40	17 and I can see it. 11:31:39
18 going to The New York Times and first 11:29:41	18 MR. LEE: Okay. 11:31:41
19 started looking at their -- their privacy 11:29:43	19 BY MS. TREBICKA: 11:31:41
20 policy. 11:29:46	20 Q. All right. Thank you. 11:31:42
21 I have -- you know, when I get 11:29:47	21 Mr. Byatt, you'll be a pro by 11:31:43
22 e-mails saying that terms of service or 11:29:50	22 the end of this. So you see this 11:31:45
23 privacy policies are updated, as a rule, I 11:29:53	23 screenshot that was taken of the cookie 11:31:52
24 tend to review those as well, but again, I 11:29:56	24 banner? 11:31:54
25 couldn't tell you exactly when that would 11:29:59	25 A. This screenshot that was taken 11:31:56
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1 have happened for either of those two 11:30:01	1 on the cookie banner, I -- so I see 11:31:58
2 websites. 11:30:04	2 several screenshots here, maybe one really 11:32:01
3 Q. You mentioned the GDPR notice; 11:30:04	3 long screenshot, yeah. By the cookie 11:32:03
4 do you recall that testimony? 11:30:08	4 banner, you're referring to this thing at 11:32:08
5 A. I do. 11:30:09	5 the bottom of page 1 of the document? 11:32:10
6 Q. What did you mean by that? 11:30:09	6 Q. Correct. 11:32:14
7 A. A bunch of websites have like a 11:30:11	7 A. Okay. I do see this, yes. 11:32:15
8 little pop-up that comes up that has like 11:30:14	8 Q. Do you see that? I'm calling it 11:32:16
9 notifications about cookies and data and 11:30:15	9 cookie banner. You can call it a cookie 11:32:18
10 privacy stuff. 11:30:18	10 pop-up. Do you see a little X in the 11:32:21
11 Q. Okay. 11:30:19	11 lower left corner? 11:32:25
12 A. And that -- that's -- that's the 11:30:20	12 A. I do. 11:32:26
13 notice that -- it is my understanding that 11:30:21	13 Q. And do you -- when you mentioned 11:32:27
14 it exists because of some European laws. 11:30:24	14 a GDPR notice pop-up, I believe you called 11:32:30
15 Q. I'd like to mark as Exhibit 1 -- 11:30:34	15 it, is this what you were referring to? 11:32:33
16 actually, let me stop there. 11:30:36	16 A. This would be similar to it, 11:32:36
17 MS. TREBICKA: This is the first 11:30:39	17 yes. This is sort of roughly, generally 11:32:39
18 deposition of plaintiffs so I don't 11:30:40	18 the kind of thing that I was talking 11:32:41
19 need to stop. Let's just mark as 11:30:42	19 about, yes. 11:32:43
20 Exhibit 1, tab 38, Tracy. 11:30:43	20 Q. And if there's any differences 11:32:43
21 MR. LEE: So I don't mean to 11:30:54	21 between what you were talking about and 11:32:47
22 interrupt, Viola, but this is 11:30:56	22 this, can you describe them for me? 11:32:50
23 Mr. Byatt's first time being deposed 11:30:57	23 A. No, certainly not. I don't know 11:32:52
24 and certainly his first time being 11:30:59	24 if there are specifics that are compliant 11:32:54
25 deposed remotely, so I just wanted to 11:31:01	25 with certain regulatory bodies. Yeah, 11:32:58
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<p>1 Q. And what did you do before that? 11:46:43</p> <p>2 A. Nothing. I was a child. I 11:46:47</p> <p>3 worked at a movie theater one summer. 11:46:53</p> <p>4 Q. So your entire professional 11:46:56</p> <p>5 career, you have been a software 11:46:58</p> <p>6 developer? 11:46:59</p> <p>7 A. That's correct. 11:47:00</p> <p>8 Q. Do you ever -- when you go on 11:47:07</p> <p>9 the Internet, do you ever look at the 11:47:09</p> <p>10 underlying code of the website? 11:47:11</p> <p>11 A. So that doesn't make a ton of 11:47:21</p> <p>12 sense. Most code on websites is 11:47:26</p> <p>13 obfuscated. I can look at the code, but 11:47:33</p> <p>14 it's -- like humans can't read a lot of 11:47:40</p> <p>15 it. So I -- I have looked at some of that 11:47:41</p> <p>16 on websites, but it -- that -- it's very 11:47:45</p> <p>17 rare because I generally am a human who 11:47:48</p> <p>18 can't read it. 11:47:52</p> <p>19 Q. You browse on Chrome, right? 11:47:54</p> <p>20 A. Yes. 11:47:57</p> <p>21 Q. Sometimes? 11:47:58</p> <p>22 A. Yeah, yeah. Primarily I'd say, 11:47:59</p> <p>23 yeah. 11:48:02</p> <p>24 Q. Primarily. Do you use any other 11:48:02</p> <p>25 browsers? 11:48:04</p> <p style="text-align: right;">Page 46</p>	<p>1 Q. What does it tell you if you go 11:49:15</p> <p>2 to the developer tools on the particular 11:49:16</p> <p>3 website, generally speaking? 11:49:20</p> <p>4 A. A lot. You can -- you can get 11:49:22</p> <p>5 all kinds of -- that's -- that's very, 11:49:25</p> <p>6 very broad. 11:49:27</p> <p>7 Q. Does it tell you where your -- 11:49:29</p> <p>8 let me back up. 11:49:33</p> <p>9 Does it tell you what types of 11:49:34</p> <p>10 services the website uses? 11:49:37</p> <p>11 A. Some of them. It -- it can tell 11:49:41</p> <p>12 you some of them. It -- there's no 11:49:44</p> <p>13 mechanism for it to tell you everything. 11:49:47</p> <p>14 There's also no mechanism for it to tell 11:49:50</p> <p>15 you what some of those services that it 11:49:53</p> <p>16 can tell you about is doing with any 11:49:57</p> <p>17 information that it gets. 11:49:59</p> <p>18 Q. Does it show what -- whether 11:50:01</p> <p>19 your information is being sent to another 11:50:05</p> <p>20 domain? 11:50:08</p> <p>21 A. It can. It -- again, it's the 11:50:09</p> <p>22 same answer as the last one. It -- it can 11:50:12</p> <p>23 show you some of that information. It is 11:50:15</p> <p>24 not the only way. There are ways that one 11:50:18</p> <p>25 can share information that would not 11:50:22</p> <p style="text-align: right;">Page 48</p>
<p>1 A. I -- I have used other browsers, 11:48:05</p> <p>2 but the vast majority of my -- my browsing 11:48:07</p> <p>3 is -- is on Chrome. If I -- if I use 11:48:12</p> <p>4 other browsers, it's for things like, you 11:48:15</p> <p>5 know, testing things that I'm working on. 11:48:17</p> <p>6 Q. Understood. And what other 11:48:20</p> <p>7 browsers do you use for -- to test things 11:48:21</p> <p>8 that you're working on? 11:48:24</p> <p>9 A. All of them. I have used all of 11:48:25</p> <p>10 them. But, you know, for some of these 11:48:28</p> <p>11 we're talking about, I've opened, you 11:48:30</p> <p>12 know, three times in -- in, you know, the 11:48:32</p> <p>13 past ten years. I would say that probably 11:48:35</p> <p>14 Firefox and Edge or Internet Explorer 11:48:39</p> <p>15 before Edge would be the ones that have 11:48:42</p> <p>16 gotten any other significant usage. 11:48:46</p> <p>17 Q. On Chrome, are you aware of 11:48:48</p> <p>18 developer tools, that option? 11:48:53</p> <p>19 A. I am, yes. 11:48:55</p> <p>20 Q. Have you ever looked at that 11:48:57</p> <p>21 when you go on the Internet and browse a 11:48:58</p> <p>22 site? 11:49:00</p> <p>23 A. I can't say with specificity. 11:49:06</p> <p>24 Have I ever? Probably. It's not 11:49:10</p> <p>25 something I make any kind of habit of. 11:49:12</p> <p style="text-align: right;">Page 47</p>	<p>1 appear in developer tools, and developer 11:50:24</p> <p>2 tools does not have a way of telling me 11:50:26</p> <p>3 what happens when the information gets 11:50:28</p> <p>4 over there. 11:50:29</p> <p>5 Q. Have you ever looked at 11:50:32</p> <p>6 developer tools while you've been in an 11:50:33</p> <p>7 Incognito browsing session? 11:50:36</p> <p>8 A. Again, I -- I can't point to 11:50:37</p> <p>9 ever having done it specifically. That 11:50:40</p> <p>10 one, I can't even say that I probably 11:50:44</p> <p>11 have. I -- I really don't know, but I 11:50:48</p> <p>12 certainly don't remember. 11:50:50</p> <p>13 MS. TREBICKA: James -- or 11:51:19</p> <p>14 Mr. Lee or Mr. Byatt, I'm about to go 11:51:19</p> <p>15 on a line of questioning that will 11:51:22</p> <p>16 take about 20 minutes or so. Do you 11:51:24</p> <p>17 want to take a break now or after that 11:51:26</p> <p>18 line of questioning? 11:51:28</p> <p>19 MR. LEE: Yeah, let's take a 11:51:29</p> <p>20 break now. 11:51:30</p> <p>21 MS. TREBICKA: Okay. Let's do 11:51:31</p> <p>22 that. 11:51:32</p> <p>23 THE VIDEOGRAPHER: Going off the 11:51:32</p> <p>24 record. The time is 1:51 a.m. -- 11:51:33</p> <p>25 11:51 a.m. 11:51:54</p> <p style="text-align: right;">Page 49</p>

1 (Whereupon, a brief recess is 12:01:16	1 page 3. 12:03:57
2 taken.) 12:01:38	2 Q. At the end of page 3, do you see 12:04:07
3 THE VIDEOGRAPHER: Back on the 12:01:38	3 the bolded heading Information Collected 12:04:08
4 record. The time is 12:01 p m. 12:01:52	4 Automatically? 12:04:11
5 BY MS. TREBICKA: 12:01:52	5 A. I do. 12:04:13
6 Q. Good morning, Mr. Byatt, again. 12:01:57	6 Q. And if you scroll down to 12:04:15
7 A. Good morning. 12:02:00	7 page 4, you see the first bullet point 12:04:16
8 Q. Just a quick reminder that you 12:02:01	8 there with Tracking Technologies in Your 12:04:21
9 are still under oath; you understand that? 12:02:03	9 Browsing and Mobile Apps? 12:04:26
10 A. I do understand that, yes. 12:02:05	10 A. I do see that. 12:04:27
11 Q. Earlier, you testified about 12:02:07	11 Q. Okay. And I will read the words 12:04:28
12 visiting The New York Times on occasion; 12:02:14	12 underneath that bolded bullet point into 12:04:30
13 do you remember that? 12:02:16	13 the record. It says "These technologies 12:04:33
14 A. I do, yes. 12:02:17	14 include cookies, web beacons, tags and 12:04:35
15 Q. And you also testified that you 12:02:18	15 scripts, software development kits (or 12:04:39
16 reviewed The New York Times's privacy 12:02:20	16 SDKs) and beyond. We track and store data 12:04:41
17 policy; do you remember that? 12:02:23	17 about how you visit and use Times 12:04:45
18 A. Yes. 12:02:24	18 Services, particularly through our 12:04:47
19 MS. TREBICKA: I will mark as 12:02:25	19 websites and apps. The items we log 12:04:50
20 Exhibit 2, The New York Times privacy 12:02:26	20 include," and then it has a bulleted list. 12:04:53
21 policy currently available on The New 12:02:35	21 Do you see that? 12:04:56
22 York Times website. 12:02:37	22 A. I do. 12:04:57
23 (Exhibit 2, The New York Times 12:02:38	23 MR. LEE: Viola, before we go 12:04:57
24 Privacy Policy, Updated July 1, 2021, 12:02:38	24 on, can I get a standing objection to 12:04:59
25 marked for identification.) 12:02:39	25 this line of questioning based on lack 12:05:01
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1 BY MS. TREBICKA: 12:02:39	1 of foundation, please? 12:05:03
2 Q. And if you refresh your Exhibit 12:02:39	2 MS. TREBICKA: Noted, James. 12:05:06
3 Share, you will see it at some point. 12:02:43	3 MR. LEE: Is that a yes? 12:05:08
4 Just let me know when you see it. 12:02:44	4 MS. TREBICKA: Yes, I noted. 12:05:09
5 A. I certainly shall. It's not 12:02:46	5 MR. LEE: Thank you. 12:05:11
6 there yet. 12:02:48	6 MS. TREBICKA: It is -- I 12:05:12
7 Q. Okay. 12:02:50	7 understand that you have a standing 12:05:12
8 A. I -- there is an Exhibit 2 in 12:03:04	8 objection. 12:05:14
9 here. I'm opening it. 12:03:11	9 MR. LEE: Great. 12:05:14
10 Q. Okay. 12:03:11	10 BY MS. TREBICKA: 12:05:14
11 A. Okay. I am looking at The New 12:03:12	11 Q. Do you see the bulleted list of 12:05:17
12 York -- I'm looking at what says that is 12:03:13	12 information? 12:05:19
13 The New York Times privacy policy, last 12:03:14	13 A. Yes, I do. 12:05:20
14 updated on July 1, 2021. 12:03:16	14 Q. And actually, it's a bulleted 12:05:21
15 Q. Okay. Do you remember reviewing 12:03:18	15 list of the items that The New York Times 12:05:23
16 this policy? 12:03:19	16 says it logs; do you see that? 12:05:25
17 A. Not necessarily with 12:03:22	17 A. I do see that, yes. 12:05:27
18 specificity. I remember reviewing a 12:03:24	18 Q. So of these pieces of data, of 12:05:30
19 document that looks like this. I -- I 12:03:30	19 items that they log, do you consider any 12:05:34
20 could not tell you if it was the exact 12:03:33	20 of it to be your personal information? 12:05:36
21 same thing. 12:03:35	21 A. Yes, I would say so. 12:05:39
22 Q. Understood. If you could scroll 12:03:35	22 Q. Okay. Which ones? 12:05:48
23 down to page 3 of the PDF. 12:03:37	23 A. Well, I -- I would say all of 12:05:53
24 A. I think I'm there. Hold on. 12:03:45	24 them really. Other usage information, the 12:05:58
25 The page numbers aren't marked. I am on 12:03:47	25 last one is pretty broad so I don't know 12:06:00
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1 Analytics." So if we can mark for the 12:25:36	1 browser? 12:27:22
2 record tab 16 as Exhibit 3. 12:25:38	2 A. I couldn't say. I couldn't list 12:27:22
3 (Exhibit 3, Google Analytics 12:25:40	3 them. 12:27:24
4 Opt-out Browser Add-on document, 12:25:40	4 Q. Any that you remember sitting 12:27:25
5 marked for identification.) 12:25:43	5 here today? 12:27:27
6 MR. LEE: Viola, do I have the 12:25:43	6 A. I believe I have an ad blocker 12:27:37
7 same standing objection as to 12:25:44	7 on there. I do not remember which one and 12:27:40
8 Exhibit 3 regarding lack of 12:25:47	8 I know that there are many. I may have 12:27:45
9 foundation? 12:25:49	9 others. I don't know. I haven't reviewed 12:27:53
10 MS. TREBICKA: Do you want to 12:25:49	10 that in some time. 12:27:55
11 see it first? 12:25:50	11 Q. Do you have a Google Analytics 12:27:57
12 MR. LEE: I already know based 12:25:51	12 opt-out browser add-on to your browser? 12:27:59
13 on the response to the last question 12:25:52	13 A. I -- I don't know. I doubt it 12:28:04
14 that I don't need to see it. 12:25:53	14 since I don't recall having seen this 12:28:08
15 MS. TREBICKA: You may have the 12:25:55	15 screen, but, yeah, I -- I don't know. 12:28:10
16 same standing objections. 12:25:57	16 Probably not. 12:28:17
17 MR. LEE: Thanks. 12:25:58	17 Q. This Google Analytics Opt-out 12:28:30
18 A. I have Exhibit 3 open. 12:26:00	18 Browser Add-on page explains "To provide 12:28:32
19 BY MS. TREBICKA: 12:26:00	19 website visitors the ability to prevent 12:28:35
20 Q. Have you seen this document 12:26:09	20 their data from being used by Google 12:28:38
21 before? 12:26:10	21 Analytics, we have developed the Google 12:28:41
22 A. I couldn't say. 12:26:10	22 Analytics opt-out browser add-on for 12:28:43
23 Q. And I said document, but do you 12:26:11	23 websites using the supported version of 12:28:46
24 recall ever seeing this website before? 12:26:14	24 using Google Analytics JavaScript 12:28:49
25 A. Yeah, I don't recall. 12:26:17	25 (analytics.js, gtag.js)." 12:28:54
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1 Q. What is a browser add-on? 12:26:18	1 Do you see that? 12:28:57
2 MR. LEE: Objection to form. 12:26:26	2 A. I do see it. 12:28:58
3 BY MS. TREBICKA: 12:26:26	3 Q. It further says "If you want to 12:28:58
4 Q. Let me take a step back and say, 12:26:29	4 opt-out, download and install the add-on 12:29:00
5 Mr. Byatt, you -- you responded earlier to 12:26:31	5 for your web browser. The Google 12:29:03
6 my questions about your professional 12:26:33	6 Analytics opt-out add-on is designed to be 12:29:03
7 career that you've been a software 12:26:35	7 compatible with Chrome, Safari, Firefox 12:29:09
8 developer for the past ten years, right? 12:26:37	8 and Microsoft Edge. In order to function, 12:29:11
9 A. That's right. 12:26:40	9 the opt-out add-on must be able to load 12:29:14
10 Q. In your time as a software 12:26:40	10 and execute properly on your browser. 12:29:17
11 developer, have you understood -- have you 12:26:41	11 Learn more about the opt-out and how to 12:29:18
12 obtained an understanding as to what a 12:26:44	12 properly install the browser add-on." 12:29:22
13 browser add-on is? 12:26:46	13 Do you see that? 12:29:25
14 A. Some understanding, yes. 12:26:48	14 A. I do see that. 12:29:26
15 Q. So in that understanding, what 12:26:49	15 Q. So you agree that had you been 12:29:28
16 is a browser add-on? 12:26:51	16 aware of this analytics browser opt-out 12:29:29
17 A. As I understand it, it is a 12:26:53	17 add-on, you would have had the ability to 12:29:36
18 piece of maybe third-party software that 12:26:56	18 prevent your data from -- for -- from 12:29:40
19 does not come with the browser that 12:27:00	19 being used by Google Analytics, correct? 12:29:42
20 changes the browser's behavior. 12:27:02	20 A. Well, I don't particularly trust 12:29:44
21 Q. Do you have any browser add-ons 12:27:05	21 Google and what they tell me about their 12:29:47
22 on your Chrome browser? 12:27:08	22 privacy and opt-outs at this point, so I'm 12:29:48
23 A. Yes, I -- I believe so. 12:27:13	23 not sure I do agree to that right now, but 12:29:53
24 Q. What are those browser add-ons 12:27:16	24 I do agree that that is what Google is 12:29:54
25 that you have installed on your Chrome 12:27:18	25 representing with this. 12:29:57
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1 to use my sort of behavioral data, what do 15:09:03	1 Q. Do you have a sense of how much 15:12:01
2 you mean by that? 15:09:06	2 your personal information is worth if you 15:12:04
3 A. I mean for Google to have access 15:09:09	3 were to try to sell it? 15:12:06
4 to my data, basically all of the things 15:09:15	4 MR. LEE: Do you mean this 15:12:09
5 that I asked them to not collect 15:09:19	5 Incognito personal -- Incognito data 15:12:10
6 temporarily when I am in Incognito mode. 15:09:21	6 or generally? 15:12:12
7 MR. LEE: You know what, Belle, 15:09:31	7 MS. TREBICKA: Well, why don't 15:12:14
8 can you just read the answer back for 15:09:33	8 we take it in steps then. 15:12:15
9 me? 15:09:35	9 BY MS. TREBICKA: 15:12:15
10 (Answer read back.) 15:09:36	10 Q. Mr. Byatt, do you have a 15:12:17
11 BY MS. TREBICKA: 15:09:36	11 sense -- well, first off, have you ever 15:12:19
12 Q. And what are those things? 15:09:54	12 tried to sell any of your personal 15:12:21
13 A. I -- I don't have an exhaustive 15:09:58	13 information related to your browsing? 15:12:23
14 list, but one list would be that -- that 15:09:59	14 A. Not that I recall. 15:12:31
15 we were looking at from the privacy 15:10:02	15 Q. So as far as your -- the 15:12:33
16 policy. 15:10:06	16 browsing information when you are not in 15:12:38
17 Q. Are you referring to the bullet 15:10:06	17 Incognito mode, do you have a sense for 15:12:42
18 pointed list that I asked you about in the 15:10:12	18 how much that is worth? 15:12:43
19 privacy policy? 15:10:15	19 A. I would imagine the market cap 15:12:46
20 A. I believe there was a bullet 15:10:17	20 of Google divided by its user base. 15:12:47
21 pointed list and then I think there was 15:10:19	21 Q. Because you understand that all 15:12:51
22 also a list of data that might have been 15:10:21	22 of Google's market cap is as a result of 15:12:53
23 in paragraph form. I don't remember 15:10:23	23 the use of this information? 15:12:59
24 exactly, but I am referring to lists that 15:10:25	24 A. Probably not all of it, but I do 15:13:04
25 we've gotten on the record here, yes. 15:10:29	25 understand that Google pours lots of money 15:13:07
Page 150	Page 152
1 Q. For the record to be clear, why 15:10:37	1 and resources into collecting that 15:13:13
2 don't we go back to Exhibit 7? 15:10:39	2 information and monetizing that 15:13:15
3 A. I am in Exhibit 7. 15:10:56	3 information. I'm not sure what the 15:13:17
4 Q. Okay. If you could scroll to 15:10:58	4 specific dollar value of my information 15:13:19
5 page 2. 15:11:00	5 is, but I certainly understand that it's 15:13:22
6 A. I'm there. 15:11:05	6 worth quite a bit to Google. 15:13:24
7 Q. And it's the second paragraph 15:11:05	7 Q. And how do you understand that 15:13:27
8 from the bottom that's the one that starts 15:11:08	8 Google's poor -- that Google collects 15:13:30
9 with the "information we collect"? 15:11:11	9 information and monetizes information? 15:13:34
10 A. Yes. So I would mean, at 15:11:13	10 A. I'm sorry, could you -- could 15:13:44
11 minimum, that information listed there 15:11:18	11 you clarify? 15:13:46
12 starting with "the information we 15:11:19	12 Q. How -- you want me to clarify. 15:13:47
13 collect," ending with "refer URL of your 15:11:21	13 I'll re-ask. 15:13:51
14 request," I also think, yeah, the next 15:11:24	14 A. Yes, go ahead. 15:13:52
15 page under "Your activity," it also has 15:11:28	15 Q. How do you know that Google 15:13:54
16 some activity that I think I might have 15:11:31	16 collects information and monetizes that 15:13:55
17 included with that as information that I'm 15:11:36	17 information? 15:13:58
18 agreeing to give Google when I sign those 15:11:41	18 A. It's common knowledge, I think. 15:14:03
19 contracts or agree to those contracts, I 15:11:45	19 I don't know how to say that more 15:14:08
20 guess. 15:11:47	20 specifically, but I think everyone knows 15:14:09
21 Q. Have you ever tried to sell the 15:11:50	21 that that's Google's business model. 15:14:11
22 personal information that's the subject of 15:11:53	22 Q. Has Google's conduct, as you 15:14:16
23 this lawsuit? 15:11:55	23 understand it, affected your ability to 15:14:18
24 A. Have I tried to sell it? No, I 15:11:57	24 monetize yourself, your personal 15:14:23
25 have not. 15:12:00	25 information? 15:14:27
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1 MR. LEE: Again, are we still 15:14:28	1 previously at minimum. 15:16:59
2 talking about non-Incognito 15:14:29	2 (Exhibit 11, Second Amended 15:17:11
3 information? 15:14:31	3 Complaint, marked for identification.) 15:17:11
4 MS. TREBICKA: Yes. 15:14:31	4 BY MS. TREBICKA: 15:17:11
5 A. I don't know because I haven't 15:14:40	5 Q. We've marked as Exhibit 10 the 15:17:11
6 sort of explored that market to see how my 15:14:43	6 Second Amended Complaint in this lawsuit. 15:17:17
7 data is priced or how Google having that 15:14:47	7 So -- I believe it's Exhibit 10. 15:17:21
8 information would have affected the price. 15:14:51	8 THE COURT REPORTER: I thought 15:17:26
9 So I -- I don't know. 15:14:56	9 there was a previous Exhibit 10. 15:17:27
10 BY MS. TREBICKA: 15:14:56	10 MS. TREBICKA: Exhibit 11. I 15:17:28
11 Q. And has Google's conduct that's 15:14:59	11 apologize. 15:17:34
12 the subject of this lawsuit affected your 15:15:01	12 A. I have Exhibit 11 open. 15:17:37
13 ability to use this information in any 15:15:03	13 BY MS. TREBICKA: 15:17:37
14 way? 15:15:09	14 Q. Do you recognize this document, 15:17:54
15 A. Well, one way that I would like 15:15:12	15 Mr. Byatt? 15:17:55
16 to sort of use the information is to 15:15:14	16 A. Yes. 15:17:56
17 control how it's shared. By 15:15:16	17 Q. What is it? 15:17:56
18 misrepresenting how my information is 15:15:22	18 A. It's the second amended 15:17:57
19 shared, that is impacting my ability to 15:15:23	19 complaint in this lawsuit. 15:18:00
20 make, you know, accurate and informed 15:15:26	20 Q. Have you read it? 15:18:02
21 decisions about the use of my data. So, 15:15:27	21 A. I have. 15:18:03
22 yes. 15:15:29	22 Q. Did you read it before it was 15:18:03
23 Q. Any other way? 15:15:31	23 filed? 15:18:06
24 A. Maybe. I -- I'm wary to rule 15:15:33	24 A. I did. 15:18:06
25 anything out specifically, but that is 15:15:36	25 Q. Did you have any changes to it? 15:18:10
Page 154	Page 156
1 certainly what comes to mind. 15:15:40	1 A. I don't recall. That also 15:18:13
2 Q. Now, specifically, I'm going to 15:15:44	2 sounds privileged. I don't know -- it 15:18:16
3 switch my -- the same line of questioning 15:15:48	3 sounds like you're talking about 15:18:17
4 but now specific to Incognito. Have you 15:15:50	4 conversations between me and my attorney 15:18:19
5 ever tried to sell any of the browsing 15:15:55	5 so I -- I don't know, I -- I don't recall 15:18:22
6 information related to your Incognito 15:15:57	6 either way. 15:18:24
7 sessions? 15:15:59	7 MR. LEE: It's a very good 15:18:25
8 A. Absolutely not. The point of 15:16:01	8 point, Mr. Byatt. Thank you. 15:18:26
9 going into Incognito mode is for nobody to 15:16:03	9 BY MS. TREBICKA: 15:18:26
10 have that information. 15:16:05	10 Q. And I'm certainly not asking 15:18:28
11 Q. Do you have a sense for how much 15:16:07	11 about the contents of any communications. 15:18:29
12 the browsing information related to your 15:16:09	12 It was a different question, but thank you 15:18:32
13 Incognito browsing is worth? 15:16:13	13 for that. 15:18:34
14 A. Again, same as before, actual 15:16:18	14 A. Yeah. 15:18:35
15 dollar value, no, I do not, but I am 15:16:23	15 Q. That you are attuned to those 15:18:36
16 certain that it is substantial as is 15:16:25	16 issues. Let me direct your attention to 15:18:38
17 evidenced by the fact that we're here 15:16:30	17 paragraph 282. 15:18:43
18 today talking about this. 15:16:34	18 A. Do you know what page number 15:18:51
19 Q. And has Google's conduct that's 15:16:39	19 just to make my life a little easier? 15:18:52
20 the subject of this lawsuit affected your 15:16:42	20 Q. I will give it you in a second. 15:18:54
21 ability to monetize this information? 15:16:45	21 A. Okay. 15:18:54
22 A. I do not know. 15:16:49	22 Q. You may know before I do. I'm 15:18:58
23 Q. Has it affected your ability to 15:16:52	23 still scrolling. 15:19:01
24 use this information? 15:16:54	24 A. Me too. I'm at 147. I'm almost 15:19:02
25 A. Yes, on the same grounds as 15:16:57	25 there. 15:19:08
Page 155	Page 157

<p>1 (Time noted: 5:45 p.m.)</p> <p>2</p> <p>3 _____</p> <p>4 WILLIAM BYATT</p> <p>5</p> <p>6 _____</p> <p>6 Subscribed and sworn to</p> <p>7 before me this _____</p> <p>7 day of _____ 2022.</p> <p>8 _____</p> <p>8 Notary Public</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 258</p>	<p>1 VIOLA TREBICKA, ESQ.</p> <p>2 violatrebicka@quinnemanuel.com</p> <p>3 December 23, 2021</p> <p>4 RE: BROWN VS. GOOGLE LLC</p> <p>5 DECEMBER 20, 2021, WILLIAM BYATT, JOB NO. 5001125</p> <p>6 The above-referenced transcript has been</p> <p>7 completed by Veritext Legal Solutions and</p> <p>8 review of the transcript is being handled as follows:</p> <p>9 ___ Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext</p> <p>10 to schedule a time to review the original transcript at</p> <p>11 a Veritext office.</p> <p>12 ___ Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF</p> <p>13 Transcript - The witness should review the transcript and</p> <p>14 make any necessary corrections on the errata pages included</p> <p>15 below, notating the page and line number of the corrections.</p> <p>16 The witness should then sign and date the errata and penalty</p> <p>17 of perjury pages and return the completed pages to all</p> <p>18 appearing counsel within the period of time determined at</p> <p>19 the deposition or provided by the Code of Civil Procedure.</p> <p>20 ___ Waiving the CA Code of Civil Procedure per Stipulation of</p> <p>21 Counsel - Original transcript to be released for signature</p> <p>22 as determined at the deposition.</p> <p>23 ___ Signature Waived – Reading & Signature was waived at the</p> <p>24 time of the deposition.</p> <p>25</p> <p>Page 260</p>
<p>1 CERTIFICATION</p> <p>2</p> <p>3 I, BELLE VIVIENNE, a Nationally</p> <p>4 Certified Realtime Reporter, do hereby</p> <p>5 certify:</p> <p>6 That the witness whose testimony as</p> <p>7 herein set forth, was duly sworn by me;</p> <p>8 and that the within transcript is a true</p> <p>9 record of the testimony given by said</p> <p>10 witness.</p> <p>11 I further certify that I am not</p> <p>12 related to any of the parties to this</p> <p>13 action by blood or marriage, and that I am</p> <p>14 in no way interested in the outcome of</p> <p>15 this matter.</p> <p>16 IN WITNESS WHEREOF, I have hereunto</p> <p>17 set my hand this 23rd day of December</p> <p>18 2021.</p> <p>19</p> <p>20 <i>Belle Vivienne</i></p> <p>21 BELLE VIVIENNE, CKR, CCR, RPR</p> <p>22</p> <p>23 * * *</p> <p>24</p> <p>25</p> <p>Page 259</p>	<p>1 ___ Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF</p> <p>2 Transcript - The witness should review the transcript and</p> <p>3 make any necessary corrections on the errata pages included</p> <p>4 below, notating the page and line number of the corrections.</p> <p>5 The witness should then sign and date the errata and penalty</p> <p>6 of perjury pages and return the completed pages to all</p> <p>7 appearing counsel within the period of time determined at</p> <p>8 the deposition or provided by the Federal Rules.</p> <p>9 _X_ Federal R&S Not Requested - Reading & Signature was not</p> <p>10 requested before the completion of the deposition.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 261</p>

EXHIBIT 26

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3

4 CHASOM BROWN, WILLIAM BYALL,
5 JEREMY DAVIS, CHRISTOPHER
6 CASTILLO, and MONIQUE
7 TRUJILLO individually and on
8 behalf of all other similarly No.
9 situated, 5:20-cv-03664-LHK-SVK

10 Plaintiff,

11 vs.

12 GOOGLE LLC,

13 Defendant.
14 _____/

15 VIDEO-RECORDED DEPOSITION OF JEREMY DAVIS
16 REMOTE ZOOM PROCEEDING
17 Little Rock, Arkansas
18 Friday, January 7, 2022
19
20
21
22

23 REPORTED BY:

24 LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

25 Pages 1 - 183

Job No. 5019103

Page 1

<p>1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF CALIFORNIA 3 4 CHASOM BROWN, WILLIAM BYALL, 5 JEREMY DAVIS, CHRISTOPHER 6 CASTILLO, and MONIQUE 7 TRUJILLO individually and on 8 behalf of all other similarly No. 9 situated, 5:20-cv-03664-LHK-SVK 10 11 Plaintiff, 12 13 vs. 14 15 GOOGLE LLC, 16 17 Defendant. 18 19 20 21 22 23 24 25</p> <p>Video-recorded deposition of JEREMY DAVIS, taken on behalf of the Defendant, Remote Zoom Proceeding from Little Rock, Arkansas, beginning at 10:06 A.M. Central Standard Time and ending at 4:29 P.M. Central Standard Time, on Friday, January 7, 2022, before Leslie Rockwood Rosas, RPR, CSR No. 3462.</p>	<p>1 APPEARANCES (Continued): 2 3 FOR THE DEFENDANT: 4 QUINN EMANUEL URQUHART & SULLIVAN, LLP 5 BY: ANDREW H. SCHAPIRO, ESQ. 6 191 North Wacker Drive, Suite 2700 7 Chicago, Illinois 60606 8 (312) 705-7400 9 andrewschapiro@quinnemanuel.com 10 11 BY: MARIE M. HAYRAPETIAN, ESQ. 12 865 South Figueroa Street, 10th Floor 13 Los Angeles, California 90017 14 (213) 443-3000 15 mariehayrapetian@quinnemanuel.com 16 17 Also Present: 18 JoAnn Yager, Videographer 19 20 21 22 23 24 25</p>
Page 2	Page 4
<p>1 APPEARANCES: 2 3 FOR THE PLAINTIFFS: 4 BOIES SCHILLER FLEXNER LLP 5 BY: JAMES LEE, ESQ. 6 ROSSANA (ROSY) BAEZA, ESQ. 7 100 SE Second Street, Suite 2800 8 Miami, Florida 33131 9 (305) 539-8400 10 jlee@bsflfp.com 11 rbaeza@bsflfp.com 12 13 BY: HSIAO (MARK) C. MAO, ESQ. 14 44 Montgomery Street, 41st Floor 15 San Francisco, California 91401 16 (415) 293-6800 17 mmao@bsflfp.com 18 19 MORGAN & MORGAN 20 BY: RYAN MCGEE, ESQ. 21 201 North Franklin Street, 7th Floor 22 Tampa, Florida 33602 23 (813) 223-5505 24 rmcgee@forthepeople.com 25</p>	<p>1 I N D E X 2 3 4 FRIDAY, JANUARY 7, 2022 5 6 WITNESS EXAMINATION 7 JEREMY DAVIS 8 9 BY MR. SCHAPIRO 9 10 BY MR. LEE 169 11 12 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER: 13 14 Page Line 15 162 6 16 17 18 19 20 21 22 23 24 25</p>
Page 3	Page 5

<p>1 Q. And has that always been the case when you've 2 used Chrome?</p> <p>3 A. Obviously I couldn't have used it before the 4 feature was available. But I have distinct memory of 5 being an early user of Chrome. And when the incognito 10:47:02 6 feature was launched or available, I very quickly started 7 adopting that as a standard practice, to use incognito 8 mode.</p> <p>9 Q. And I think you said a moment ago you said you 10 found it convenient to use that as the -- to use 10:47:18 11 incognito as the default. Can you elaborate? What do 12 you mean by that?</p> <p>13 A. I can. So there's basically -- and this is a 14 little bit technical, but there's an executable on the 15 computer, which is the -- the bytecode or the program for 10:47:43 16 Chrome, the browser.</p> <p>17 For those executables, you can pass something 18 called a parameter. And this is a bit of extra text 19 after the thing that when you click on the link on your 20 computer it passes an extra command to the browser. And 10:48:01 21 this is a standard and supported command from Google. So 22 it's nothing I've created on my own. It's all Google 23 support.</p> <p>24 But if I put dash incognito at the end of that 25 parameter, when I click the icon for Chrome, it will 10:48:16</p> <p style="text-align: right;">Page 34</p>	<p>1 person or I'm some super spy or I want to do something 2 bad or I'm hiding it, it's just I appreciate my privacy 3 and I value it. And this was something that just become 4 an automatic part of my day of an additional barrier to 5 protect my privacy in a world that increasingly seems 10:50:19 6 like privacy is more and more difficult to be had. And 7 so to me, that made sense. That's why I use it.</p> <p>8 Q. And when you're browsing the internet, is it 9 fair to say you -- you take careful precautions to 10 protect your privacy? 10:50:46</p> <p>11 MR. LEE: Objection to form.</p> <p>12 THE WITNESS: I would say I take reasonable 13 action to protect my privacy.</p> <p>14 Q. BY MR. SCHAPIRO: Well, do you remember 15 answering some interrogatories in this case? 10:51:06</p> <p>16 A. Yes, I believe I reviewed those with -- with 17 counsel.</p> <p>18 Q. And do you recall in response to one of those, 19 Interrogatory Number 3, responding that your privacy is a 20 human right and you take careful precautions to protect 10:51:28 21 your privacy?</p> <p>22 MR. LEE: Are you asking him if he remembers our 23 phase 3?</p> <p>24 MR. SCHAPIRO: No, I'm asking him if he 25 remembers Interrogatory 3. 10:51:41</p> <p style="text-align: right;">Page 36</p>
<p>1 automatically launch in incognito mode. But that's the 2 convenience part.</p> <p>3 So rather than -- if I switch between, and I 4 generally enjoy everything that I can do to enhance 5 privacy, for me, that made sense. 10:48:33</p> <p>6 Q. Okay. So when you were talking about 7 convenient, you were talking about just the way you 8 enable incognito; is that --</p> <p>9 A. Correct. So rather -- that's fair. Instead of 10 launching in non-incognito mode and having to launch a 10:48:56 11 new incognito mode tab every time I launch Chrome, I just 12 set it as the default. That saves me -- that saves me 13 time.</p> <p>14 Q. Sure.</p> <p>15 So I want to ask you about the why, then. And 10:49:07 16 you mentioned a moment ago -- I think you used the phrase 17 "enhancing privacy." Why do you choose to use incognito 18 as your default mode, recognizing there might be multiple 19 reasons?</p> <p>20 A. Sure. Again, I can speak for my person, I can't 10:49:36 21 speak for others. But privacy is important to me. And 22 if there is a feature that advertises itself as an 23 enhancement to privacy, I have an interest in that.</p> <p>24 I use Chrome quite a bit for searching, for all 25 activities online. Again, not because I'm a nefarious 10:49:59</p> <p style="text-align: right;">Page 35</p>	<p>1 Q. I'm happy to show it to you if you want. That's 2 fine. I just thought it would be quicker if you recall. 3 So let's look at Exhibit 3. 4 (Exhibit 3, Plaintiff Jeremy Davis' Objections 5 and Responses to Defendant's First Set of 10:51:52 6 Interrogatories, marked for identification 7 electronically by counsel.)</p> <p>8 Q. BY MR. SCHAPIRO: Mine is taking a moment to 9 load. I don't know about yours.</p> <p>10 A. Just refreshing now. I see it now. 10:52:12</p> <p>11 Q. All right. So feel free to scroll through the 12 document, and let me know at your convenience if these 13 are interrogatories to which you provided -- in -- in 14 conjunction with your lawyers to which you provided some 15 answers. 10:52:37</p> <p>16 A. And the question was regarding Interrogatory 3; 17 is that correct?</p> <p>18 Q. Yes.</p> <p>19 A. Okay. Do you have a line number?</p> <p>20 Q. Yeah. This would be -- let's see here. 10:52:46</p> <p>21 MR. LEE: It's line 7 and 8, Mr. Schapiro.</p> <p>22 MR. SCHAPIRO: Thanks, James.</p> <p>23 Q. Yeah, lines 7 and 8. There we are. It's right 24 after "Notwithstanding and subject to these objections." 25 A. I see this now. Yes. Yeah, that is familiar to 10:53:22</p> <p style="text-align: right;">Page 37</p>

<p>1 me.</p> <p>2 Q. And is it accurate that you take careful</p> <p>3 precautions to protect your privacy?</p> <p>4 A. Yes, I think I take careful and reasonable</p> <p>5 precautions to protect my privacy. 10:53:35</p> <p>6 Q. All right. We can close out of this, if you</p> <p>7 want.</p> <p>8 So what are some of the careful precautions you</p> <p>9 take to protect your privacy?</p> <p>10 A. Yeah, I -- I thought Google incognito was going 10:53:49</p> <p>11 to be one of those steps. And so my perspective has</p> <p>12 changed once I've understood what has happened. But</p> <p>13 that's one.</p> <p>14 And I make sure that I use a wireless mesh</p> <p>15 system at the house. It's a retail mesh, eero. But it 10:54:15</p> <p>16 basically has a very strong firewall on it, and it</p> <p>17 prevents leakage and serves as a strong internet router.</p> <p>18 And then obviously for work and/or other times,</p> <p>19 I may periodically use a VPN technology.</p> <p>20 Q. Do you use a VPN at home? 10:54:42</p> <p>21 A. Primarily for work.</p> <p>22 Q. Do you consider yourself more privacy conscious</p> <p>23 than the average person?</p> <p>24 MR. LEE: Objection to form.</p> <p>25 THE WITNESS: It's tough for me to know what the 10:55:11</p> <p style="text-align: right;">Page 38</p>	<p>1 out of it, I will. So if I don't have to authenticate or</p> <p>2 identify myself, I won't. But if the app requires me to</p> <p>3 identify myself to get utility, I'll obviously do that.</p> <p>4 That's the -- I think that's about the only</p> <p>5 distinction I could make there. Like, if it's possible 10:57:01</p> <p>6 to use an application anonymously, I probably will.</p> <p>7 Q. And is the same true of websites, that sometimes</p> <p>8 in order to get the full utility of the site you need to</p> <p>9 sign in or identify yourself in some way?</p> <p>10 A. Yeah, that's true. Like, think about your bank; 10:57:18</p> <p>11 right? Obviously if you're going to do online banking</p> <p>12 you have to identify yourself.</p> <p>13 Q. And is it important to you that websites you</p> <p>14 visit function properly?</p> <p>15 A. Yes. I mean, like I would like them to function 10:57:41</p> <p>16 properly. I think everybody has that interest.</p> <p>17 Q. Yeah.</p> <p>18 So as someone in the tech space, you understand</p> <p>19 that in order to serve up a site to you -- or sort of</p> <p>20 serve up the content to you, a website has to know, for 10:58:02</p> <p>21 example, your IP address so it knows where the -- where</p> <p>22 the content should go?</p> <p>23 A. It knows an IP address; right? Like it knows</p> <p>24 either the gateway specifically that you're behind, your</p> <p>25 firewall; right? It might not know your device's 10:58:19</p> <p style="text-align: right;">Page 40</p>
<p>1 average person's perspective of privacy is, and privacy</p> <p>2 is a complicated topic. I would say I have a reasonable</p> <p>3 understanding of privacy concerns.</p> <p>4 I think any informed individual would probably</p> <p>5 be interested in the same level -- have the same level of 10:55:29</p> <p>6 interest in privacy that I have.</p> <p>7 Q. BY MR. SCHAPIRO: So you mentioned the wireless</p> <p>8 setup you have at your house with the firewall and</p> <p>9 sometimes using a VPN at work. Are there any other</p> <p>10 precautions that you take to protect your privacy while 10:55:49</p> <p>11 you browse the internet that you can think of while you</p> <p>12 sit here?</p> <p>13 A. I mean, incognito was my primary response</p> <p>14 because of the claims that I understood from -- from</p> <p>15 Google. That's the primary one. 10:56:08</p> <p>16 I will occasionally use a personal VPN, but it's</p> <p>17 not on all the time. Like every once in a while I may</p> <p>18 use a product called NordVPN, I believe is the product.</p> <p>19 But it's not something I use all the time.</p> <p>20 Q. And how about when using apps? Is there 10:56:25</p> <p>21 anything additional or different? Because I guess I was</p> <p>22 just asking, you know, while you browse the internet.</p> <p>23 But while you use apps, do you take in anything</p> <p>24 additional you do to protect privacy?</p> <p>25 A. If I can use an app anonymously and get utility 10:56:41</p> <p style="text-align: right;">Page 39</p>	<p>1 specific IP.</p> <p>2 But in general, yes, I understand that in the</p> <p>3 request response cycle between a user and an application</p> <p>4 or website, it has to know where to route that traffic</p> <p>5 response back to. And the mechanism that it uses 10:58:36</p> <p>6 primarily to do that is IP.</p> <p>7 Q. Okay. Well, that's a fair distinction you make.</p> <p>8 So you're saying an IP address doesn't necessarily</p> <p>9 identify a user?</p> <p>10 MR. LEE: Objection to form, mischaracterizes. 10:58:47</p> <p>11 THE WITNESS: I mean, alone maybe not. But if</p> <p>12 you correlate with data -- like, for example, if -- if my</p> <p>13 home internet provider, right, infrequently refreshes or</p> <p>14 changes my IP, then that's very identifiable information;</p> <p>15 right? 10:59:09</p> <p>16 Versus if you're on a network that dynamically</p> <p>17 reassigns you an IP. It's much more difficult to</p> <p>18 associate that -- that information.</p> <p>19 So to give you a complete understanding of what</p> <p>20 my understanding of that is, IPs are, indeed, 10:59:32</p> <p>21 identifiable information for human users. Just the IP</p> <p>22 alone can be identifiable.</p> <p>23 Q. BY MR. SCHAPIRO: Well, you used the term --</p> <p>24 A. Does that answer the question?</p> <p>25 Q. You used the term "dynamic" when you were 10:59:51</p> <p style="text-align: right;">Page 41</p>

<p>1 remembering correctly?</p> <p>2 MR. LEE: He said was.</p> <p>3 THE WITNESS: Yeah, I said --</p> <p>4 Q. BY MR. SCHAPIRO: Was. Sorry. Was incognito;</p> <p>5 right? 11:05:42</p> <p>6 A. Yes, correct. I mean, I will be changing my --</p> <p>7 I'm not changing my behavior during the course of the</p> <p>8 case, but I very likely will change my behavior after the</p> <p>9 case completes.</p> <p>10 Because my confidence in the privacy claims of 11:05:51</p> <p>11 Google incognito are, let's say, challenged at this</p> <p>12 point.</p> <p>13 Q. So just to make sure I've got that right, what</p> <p>14 you're saying is that currently you're continuing to use</p> <p>15 incognito when you're surfing the web; is that right? 11:06:12</p> <p>16 A. That's correct. I didn't want to change my</p> <p>17 behavior during the course of the case. But based on</p> <p>18 the -- the results of the findings, I will likely change</p> <p>19 that behavior once the case concludes.</p> <p>20 MR. LEE: Mr. Schapiro, we've been going for 11:06:39</p> <p>21 about an hour. Whenever a nice time for a break is in</p> <p>22 the next few minutes would be appreciated.</p> <p>23 MR. SCHAPIRO: This is fine. This would be</p> <p>24 fine.</p> <p>25 So why don't we go off the record. 11:06:50</p> <p style="text-align: right;">Page 46</p>	<p>1 Prior to -- let's start with prior to your --</p> <p>2 any involvement in this lawsuit, did you have -- was your</p> <p>3 desire to maintain privacy vis-a-vis Google identical</p> <p>4 with your -- the same as your desire to maintain privacy</p> <p>5 versus any other entity on the web? Or was there 11:18:41</p> <p>6 something in particular about Google that maybe you want</p> <p>7 to stay private from Google?</p> <p>8 A. I would say before the case, the same general</p> <p>9 approach.</p> <p>10 Q. And is it important for you to know what 11:19:01</p> <p>11 information the websites you visit collect?</p> <p>12 A. Yes. In general, I'd prefer to know the</p> <p>13 information that is being collected.</p> <p>14 Q. And is it your practice to review disclosures</p> <p>15 about what's collected on websites that you visit? 11:19:38</p> <p>16 A. Yes. In general, I'm familiar with the</p> <p>17 information. And I try, as best a human can, to be</p> <p>18 informed about those disclosures.</p> <p>19 Q. So are you a person who typically reads the</p> <p>20 privacy policies of websites you visit to make sure you 11:20:03</p> <p>21 understand what information they're collecting?</p> <p>22 A. I would say definitely I've reviewed policies at</p> <p>23 sites, as well as in this case. And in Google's case, I</p> <p>24 believe I was directed to those as I accepted the Terms</p> <p>25 of Service when the account was created and as well as 11:20:28</p> <p style="text-align: right;">Page 48</p>
<p>1 MR. LEE: Sure. Take ten?</p> <p>2 MR. SCHAPIRO: Yep. See you back here in ten</p> <p>3 minutes.</p> <p>4 THE VIDEOGRAPHER: Going off the record. The</p> <p>5 time is 11:07 a.m. 11:06:58</p> <p>6 (Recess.)</p> <p>7 THE VIDEOGRAPHER: Back on the record. The time</p> <p>8 is 11:17 a.m.</p> <p>9 Q. BY MR. SCHAPIRO: Mr. Davis, do you have</p> <p>10 particular concerns about what information Google, as 11:17:07</p> <p>11 opposed to other entities on the web, collect?</p> <p>12 A. Yes. In this case, yeah, I have concern around</p> <p>13 what data Google is collecting. Specifically when I'm in</p> <p>14 incognito mode using the Chrome browser.</p> <p>15 Q. And what have you done to understand Google's 11:17:38</p> <p>16 data collection?</p> <p>17 MR. LEE: You can answer this question,</p> <p>18 Mr. Davis, but only to the extent it doesn't reveal any</p> <p>19 communications you've had with your attorneys. Okay?</p> <p>20 THE WITNESS: Understood. 11:17:53</p> <p>21 No, it's my understanding from the claims that</p> <p>22 Google has improperly collected information it said it</p> <p>23 wouldn't, in accordance with its Privacy Policy.</p> <p>24 Q. BY MR. SCHAPIRO: Yeah, I apologize. My</p> <p>25 question might not have been well formed. 11:18:11</p> <p style="text-align: right;">Page 47</p>	<p>1 the materials that's there on every splash screen of</p> <p>2 incognito mode.</p> <p>3 So I can't attest that I've seen absolutely</p> <p>4 every version. Of course I'm not building my life around</p> <p>5 the flow of those documents. But as -- as it catches my 11:20:43</p> <p>6 eye or interest, yeah, I'll read through them.</p> <p>7 Q. Right.</p> <p>8 So I just want to be clear. I mean, there</p> <p>9 are -- I think it's fair to say there are some people who</p> <p>10 never read privacy policies and they click "I accept, I 11:20:56</p> <p>11 agree," and I suppose there are some people all the way</p> <p>12 at the other end of the spectrum who read every word of</p> <p>13 everything anytime they go anywhere on the web. As best</p> <p>14 as you're able, where would you place yourself on that</p> <p>15 spectrum? 11:21:18</p> <p>16 MR. LEE: Object to form, incomplete</p> <p>17 hypothetical.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: Sure. I would -- I would</p> <p>20 definitely not put myself on either end of that extreme 11:21:24</p> <p>21 per your example. I'm probably somewhere fairly in the</p> <p>22 middle, where there's times where I review it, and then</p> <p>23 there's definitely -- probably because I'm very busy --</p> <p>24 there's times that I don't read through it as careful.</p> <p>25 Q. BY MR. SCHAPIRO: And do you expect websites 11:21:41</p> <p style="text-align: right;">Page 49</p>

<p>1 that you visit to tell you if they might be sharing your 2 data with their business partners?</p> <p>3 A. Yeah, I believe that that may even be a legal 4 requirement now. It probably hasn't been that way and 5 may not be that way in every jurisdiction, but I would 11:22:02 6 know that it is becoming more frequent that when I visit 7 a cite, like, you'll see a footer where it says, "Hey, in 8 order to use this site, we're going to use cookies," or, 9 "We're collecting this type of information about you." I 10 would say that that's becoming more -- more common. 11:22:20</p> <p>11 Q. And would you expect a website to list all of 12 its business partners, or would it be sufficient in your 13 view to refer to sharing with business partners?</p> <p>14 MR. LEE: Objection to form.</p> <p>15 THE WITNESS: I won't speculate on what's proper 11:22:35 16 for one business to do or not. Their disclosures are 17 their discloses.</p> <p>18 Q. BY MR. SCHAPIRO: Well, I understand that, but I 19 guess I'm asking about what your -- what your 20 expectations are, your -- including your expectations of 11:22:48 21 privacy.</p> <p>22 Do you expect that when you -- if you were 23 looking at the disclosures on a website, it would list 24 every business partner that it shares data with, or would 25 tell you in more general terms that it shares with 11:23:07</p> <p style="text-align: right;">Page 50</p>	<p>1 Exhibit 4?</p> <p>2 MR. SCHAPIRO: Not off the top of my head.</p> <p>3 Let's see if one is indicated here.</p> <p>4 Effective date is January 1st, 2020.</p> <p>5 MR. LEE: Thank you. 11:25:15</p> <p>6 THE WITNESS: Okay. I have that document.</p> <p>7 Q. BY MR. SCHAPIRO: Okay. And if you take a look 8 at this first page here, do you see the large heading 9 "What Information Do We Collect?"</p> <p>10 A. I see that section. 11:25:30</p> <p>11 Q. And by the way, do you remember one way or 12 another whether you've ever looked at the CoinMarketCap 13 Privacy Policy?</p> <p>14 MR. LEE: Are you asking if he's seen this one?</p> <p>15 Q. BY MR. SCHAPIRO: Well, let me ask first more 11:25:47 16 generally.</p> <p>17 Any version of it?</p> <p>18 A. Yes, this is familiar to me in terms of I recall 19 there being a Privacy Policy for CoinMarketCap. And this 20 is generally familiar. I, of course, can't tell you if I 11:26:02 21 looked at this exact version.</p> <p>22 Q. All right. And do you see here under "What 23 Information Do We Collect?" CoinMarket states that they 24 correct -- and I'm looking down at letter E, quote, 25 "Information related to your use of the website and/or 11:26:19</p> <p style="text-align: right;">Page 52</p>
<p>1 business partners?</p> <p>2 A. I guess my expectation is not as relevant as 3 what the companies are doing; right? I've seen both 4 examples to your example. I've seen where some companies 5 exhaustively list -- or list off the partners that they 11:23:25 6 sell to or they may just make a blanket claim. And then 7 I think it's up to the individual to interpret whether or 8 not they perceive that as an acceptable term to them.</p> <p>9 Q. Are you familiar with the website CoinMarketCap?</p> <p>10 A. I am, yes. 11:23:47</p> <p>11 Q. And that's one of the websites that -- in some 12 of the submissions in this case, you indicated that's -- 13 that's one that you visit regularly; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Have you read the Privacy Policy of 11:24:07 16 CoinMarketCap.com?</p> <p>17 A. I believe I may have reviewed it at some point, 18 but I don't have specific recollection of when.</p> <p>19 MR. SCHAPIRO: Let's load it up as an exhibit. 20 This will now be Exhibit 4. 11:24:35 21 (Exhibit 4, CoinMarketCap Privacy and Cookie 22 Policy, marked for identification electronically 23 by counsel.)</p> <p>24 MR. LEE: Andy, while we wait for the Exhibit 25 Share to load, do you have an effective date for the 11:24:46 Page 51</p>	<p>1 the mobile application, including IP address, geographic 2 location, and date and time of your request"?</p> <p>3 Do you see that?</p> <p>4 A. Yes, I see that.</p> <p>5 Q. And do you have any objection to CoinMarketCap 11:26:35 6 collecting that data?</p> <p>7 A. As they're disclosing it, obviously no. It 8 seems that they're disclosing this because it's necessary 9 for the functionality of their site and service.</p> <p>10 Q. And would it be objectionable to you if they 11:27:01 11 were, rather than collecting it themselves, sharing the 12 data with some other companies?</p> <p>13 A. If they do not disclose that they are selling or 14 sharing that information, yes.</p> <p>15 Q. Let's take a look at page 3 under the section 11:27:15 16 entitled "Cookies and Web Beacons."</p> <p>17 Let me know when you see that.</p> <p>18 A. Okay. I see that section.</p> <p>19 Q. And you'll see that it indicates here -- this is 20 towards the end of the very first paragraph, 11:27:48 21 "CoinMarketCap and its ad management partners ('Ad 22 Partners') use cookies to record current session 23 information. Our ad partners may also from time to time 24 use web beacons (also known as internet tags, pixel tags, 25 and clear GIFs). These web beacons are provided by our 11:28:20 Page 53</p>

<p>1 fundamental claim in the Privacy Policy by Google that my 2 activities are actually private when I'm in incognito 3 mode but, in fact, it seems even anonymized profiles of 4 that information are being collected and stored.</p> <p>5 Q. If in fact anonymized profiles are not being 11:51:15 6 created, if in fact what you've been informed or led to 7 believe is not true, would you still believe that Google 8 is violating representations that it made to you?</p> <p>9 MR. LEE: Objection to the extent it calls for a 10 legal conclusion. 11:51:45</p> <p>11 THE WITNESS: The fact that the information is 12 being -- is collected, right, is cause for concern. I 13 would have to think very carefully about whether or not 14 it would change my opinion if no collection was 15 occurring. 11:52:11</p> <p>16 Again, it's a hypothetical. Like, I understand 17 that anonymized profiles are being collected.</p> <p>18 Q. BY MR. SCHAPIRO: What about if anything that is 19 collected is deleted or anonymized every time you end 20 your session? Would that change your view? 11:52:36</p> <p>21 MR. LEE: Objection. Incomplete hypothetical. 22 Also, to the extent it calls for a legal conclusion.</p> <p>23 THE WITNESS: I've not considered this notion 24 before, so give me a moment. I'm considering it.</p> <p>25 If this was a hypothetical future change to 11:53:22 Page 66</p>	<p>1 Feel free to refer to the version that you have 2 there, the hard copy, if that's easier. But let's 3 introduce as the next exhibit the Second Amended 4 Complaint, just to have a complete record.</p> <p>5 So this will be Exhibit 6, I think. 11:55:35</p> <p>6 A. Sir, what was that paragraph number again?</p> <p>7 Q. Paragraph 163.</p> <p>8 A. 163. Okay.</p> <p>9 (Exhibit 6, Second Amended Complaint, marked for 10 identification electronically by counsel.) 11:56:03</p> <p>11 THE WITNESS: I see it at the bottom of a page, 12 and it starts with: "It is common knowledge that Google 13 collects." Is that the paragraph in question?</p> <p>14 Q. BY MR. SCHAPIRO: It is.</p> <p>15 A. All right. 11:56:15</p> <p>16 Q. So, actually, why don't you go ahead, if you 17 don't mind, just read that first sentence out loud.</p> <p>18 A. Sure. What I see here is, paragraph 163, "It is 19 common knowledge that Google collects information about 20 web-browsing activity of users who are not in private 11:56:31 21 browsing mode. It is also common knowledge" --</p> <p>22 Q. You can stop. I just want to ask you first 23 about that first sentence.</p> <p>24 A. Okay.</p> <p>25 Q. Feel free to read the whole thing, so you -- if 11:56:45 Page 68</p>
<p>1 behavior, if that's the question, I think that would be a 2 step in the right direction. But I don't think that that 3 would preclude any of the damages or violation of privacy 4 that may have occurred if that stuff was being stored and 5 not deleted. I think that's the fairest way I could 11:53:43 6 answer that question.</p> <p>7 Q. BY MR. SCHAPIRO: You mentioned in your answer a 8 moment ago logging in. What were you referring to there?</p> <p>9 A. Oh, sure. Logging in. That is to provide a 10 username and password in, for example, Gmail account. I 11:54:05 11 have a Gmail account. If I want to check Gmail, I would 12 have to authenticate to access that service.</p> <p>13 Q. And do you understand that if you log in to your 14 Gmail account, is it still your expectation that Google 15 will receive no information about you? Or does that -- 11:54:25</p> <p>16 A. No, I -- no. In the case in which I'm 17 identifying myself to Google, I -- I understand that they 18 are aware of what my activities are. When I have 19 identified myself to them.</p> <p>20 Q. Do you still have the Complaint handy? 11:55:00</p> <p>21 A. I have it here, yes.</p> <p>22 Q. So can I ask you to look at paragraph 163 of the 23 Second Amended Complaint? And, you know, just for the 24 record, even though it's a document on the docket, why 25 don't we go ahead and introduce it. 11:55:20 Page 67</p>	<p>1 you want to, to yourself, but...</p> <p>2 So -- so this is referring to users who are not 3 in private browsing mode; correct?</p> <p>4 A. Correct. I see the emphasis on not in private 5 browsing mode. 11:57:06</p> <p>6 Q. Yes. And is that -- so your Complaint here says 7 that this is common knowledge. Is that knowledge that -- 8 that you, Jeremy Davis, had also prior to this lawsuit?</p> <p>9 A. Yes, that's my understanding.</p> <p>10 Q. And do you agree, as someone who works in the 11:57:24 11 space that you work in, that it is -- it's common 12 knowledge that Google collects information about web 13 browsing activity when people are not in private mode?</p> <p>14 A. Yeah, I would say that's a fair statement.</p> <p>15 Q. And is that impacted one way or the other by 11:57:57 16 whether the user has Google's -- had Chrome's sync 17 feature enabled? S-Y-N-C.</p> <p>18 A. I'm not 100 percent sure if that is solely 19 required.</p> <p>20 Q. No, I guess I'm just asking you -- well, let me 11:58:17 21 back up.</p> <p>22 Are you aware that -- that Chrome has various 23 modes? For example, incognito is one mode; right?</p> <p>24 A. (Nods head.)</p> <p>25 Q. You have to answer verbally so the court 11:58:30 Page 69</p>

<p>1 reporter can get it.</p> <p>2 A. Yes, I understand incognito to be a mode of</p> <p>3 operation for Chrome.</p> <p>4 Q. And you understand that there's something that</p> <p>5 is sometimes called basic mode, which is just regular old 11:58:42</p> <p>6 Chrome right out of the box?</p> <p>7 A. Yeah, it's the standard wide screen. I would</p> <p>8 call that normal Chrome. That's how I refer to it. So a</p> <p>9 normal Chrome session and an incognito session, yes.</p> <p>10 Q. And do you understand that users can sometimes 11:58:58</p> <p>11 choose to enable a feature called sync, S-Y-N-C, as well,</p> <p>12 if they have multiple devices?</p> <p>13 A. I believe I'm familiar with this in the profile</p> <p>14 settings of Google. Like once you're logged in, I think</p> <p>15 that's an option that is presented to you. 11:59:15</p> <p>16 Q. And do you have any belief that just using plain</p> <p>17 old Chrome right out of the box, without Sync enabled,</p> <p>18 gives you privacy protection so that Google won't see</p> <p>19 what you're doing?</p> <p>20 MR. LEE: Objection to form, calls for 11:59:38</p> <p>21 speculation, lack of foundation.</p> <p>22 THE WITNESS: I would assume that -- I can give</p> <p>23 you my personal perspective. I don't assume privacy in,</p> <p>24 quote/unquote, "normal Chrome sessions." Why else would</p> <p>25 the incognito mode exist and why else would the Privacy 12:00:01</p> <p style="text-align: right;">Page 70</p>	<p>1 up even in incognito mode. It is rare. It is rate, not</p> <p>2 the rule, but I have seen that occur in incognito mode.</p> <p>3 Q. Has that been when you're within a single</p> <p>4 incognito session, that is you might have multiple tabs</p> <p>5 open but you've been using incognito during the -- you 12:02:24</p> <p>6 know, without closing out of it?</p> <p>7 A. It's possible. I'm not sure of the conditions</p> <p>8 specifically, but I suppose that's possible.</p> <p>9 Q. Do you have any belief as to whether a targeted</p> <p>10 advertising can be beneficial to users such as yourself? 12:02:52</p> <p>11 MR. LEE: Objection to form, vague as to scope.</p> <p>12 THE WITNESS: I would say that I understand that</p> <p>13 there's a whole industry and business around targeted</p> <p>14 advertising. And I suppose there could be some utility.</p> <p>15 I think it varies by person. But, yeah, I would say 12:03:15</p> <p>16 there's probably utility in those ads.</p> <p>17 Q. BY MR. SCHAPIRO: Is Chrome the browser -- the</p> <p>18 primary browser that you use to surf the internet?</p> <p>19 A. Yes, it is the primary.</p> <p>20 Q. What other browsers, if any, do you use? And 12:03:56</p> <p>21 maybe just to narrow it a little bit, I guess I would</p> <p>22 say -- why don't we start with currently.</p> <p>23 A. Yeah, the big three that I generally find</p> <p>24 installed on any of my devices would be the native OS</p> <p>25 browser, so like if I'm on a Windows device there would 12:04:23</p> <p style="text-align: right;">Page 72</p>
<p>1 Policy refer to it as the prescribed way to browse</p> <p>2 privately?</p> <p>3 So my assert- -- my impact of understanding</p> <p>4 privacy assumptions are fundamentally different between</p> <p>5 the two. 12:00:19</p> <p>6 Q. BY MR. SCHAPIRO: All right. So here in this</p> <p>7 same sentence, a paragraph of your Complaint, it also</p> <p>8 says, "It is also common knowledge that Google causes</p> <p>9 targeted advertisements to be sent based on that</p> <p>10 information." 12:01:01</p> <p>11 Do you see that?</p> <p>12 A. Yes, I've read that sentence.</p> <p>13 Q. And do you generally understand that on what for</p> <p>14 you, I guess, are the rare occasions when you are not</p> <p>15 incognito, if you see ads tailored to your interests it's 12:01:17</p> <p>16 because Google or some other entity has received</p> <p>17 information about your past browsing?</p> <p>18 A. Yes, I understand that.</p> <p>19 Q. When you've used Chrome, have you ever seen ads</p> <p>20 that appear to be tailored to you? 12:01:37</p> <p>21 A. In normal mode, yes.</p> <p>22 Q. And I assume the flip side, but not in incognito</p> <p>23 mode?</p> <p>24 A. I have actually experienced rarely a term that I</p> <p>25 have searched for or a topic, I've seen those things show 12:01:59</p> <p style="text-align: right;">Page 71</p>	<p>1 be what historically was Internet Explorer or Mount Edge.</p> <p>2 I will generally load Mozilla Firefox on most of the</p> <p>3 computing devices.</p> <p>4 And then on the Apple devices, I have, of</p> <p>5 course, Safari. So I would say the primaries that I 12:04:41</p> <p>6 would use, it's always Google -- sorry, Chrome has been</p> <p>7 my go-to for a long time. For a long time it was the</p> <p>8 fastest, and so it ingrained a preference in faster</p> <p>9 browsing in me. That's why I use it as primary. Along</p> <p>10 with the existence of incognito mode for private 12:05:01</p> <p>11 browsing. They were there first, I think, before many of</p> <p>12 the other browsers introduced those features.</p> <p>13 But those would be the mix of browsers that I</p> <p>14 might use.</p> <p>15 Q. And when you use other browsers, let's say 12:05:16</p> <p>16 Safari, for example, or Firefox Mozilla, do you typically</p> <p>17 use their private browsing mode?</p> <p>18 A. Yes, I do.</p> <p>19 Q. And is that with the same -- roughly the same</p> <p>20 breakdown that you've described earlier? I can't 12:05:43</p> <p>21 actually remember what the percentage was, but it was the</p> <p>22 overwhelming percentage of time.</p> <p>23 A. Yes. I generally use -- if you'll recall in my</p> <p>24 earlier testimony, we talked about those parameters to</p> <p>25 set them into default -- 12:05:59</p> <p style="text-align: right;">Page 73</p>

<p>1 Q. Uh-huh.</p> <p>2 A. -- private mode. Those other browsers support</p> <p>3 the same mechanism. And I configure them in a similar</p> <p>4 way.</p> <p>5 MR. LEE: Hey, everybody. I'm getting a frozen 12:06:09</p> <p>6 screen. Are you guys getting a frozen screen?</p> <p>7 MR. SCHAPIRO: Let's see. Yeah, although I can</p> <p>8 hear perfectly well.</p> <p>9 MR. LEE: Yeah, the audio is through the phone.</p> <p>10 MR. SCHAPIRO: I'm no longer frozen. Do you 12:06:23</p> <p>11 want to wave your hands, James? Let me see if I -- yeah,</p> <p>12 I see you moving.</p> <p>13 MR. LEE: I don't see Mr. Davis moving. That's</p> <p>14 the one I'm concerned of.</p> <p>15 THE WITNESS: Oh, my Zoom session just dropped. 12:06:36</p> <p>16 THE REPORTER: Shall we go off the record,</p> <p>17 Counsel?</p> <p>18 MR. LEE: Yeah, let's take a break and figure</p> <p>19 this out.</p> <p>20 THE VIDEOGRAPHER: Going off the record. The 12:06:41</p> <p>21 time is 12:07 p.m.</p> <p>22 (Recess.)</p> <p>23 THE VIDEOGRAPHER: Back on the record. The time</p> <p>24 is 2:19 p.m. -- 12:19. Sorry.</p> <p>25 MR. LEE: Oh, you know what? I should mention 12:19:50</p> <p style="text-align: right;">Page 74</p>	<p>1 Q. BY MR. SCHAPIRO: Are you aware of whether in</p> <p>2 Chrome settings you can enable something called "block</p> <p>3 third party cookies"?</p> <p>4 A. I've seen that on the updated splash screen for</p> <p>5 incognito mode. 12:21:21</p> <p>6 Q. Are you aware of whether in Chrome settings you</p> <p>7 can enable something called "clear cookies and site data</p> <p>8 when you close all windows"?</p> <p>9 A. Yes, I think I'm familiar with that.</p> <p>10 Q. Are you aware that you can disable JavaScript in 12:21:45</p> <p>11 Chrome settings?</p> <p>12 A. Yes, I believe I'm familiar with that ability.</p> <p>13 Q. Do you know that you can install ad blocking</p> <p>14 extensions in Chrome, like ad block or ad lock plus -- ad</p> <p>15 block plus? 12:22:13</p> <p>16 A. I'm aware of the extension capabilities. I</p> <p>17 don't have specific knowledge of the -- I know there's a</p> <p>18 general -- there used to be a general capability to block</p> <p>19 ads, but I think they've retired Chrome plug-ins or</p> <p>20 something at some point. But, yeah, in general, I'm 12:22:30</p> <p>21 aware of that historically being a capability.</p> <p>22 Q. Are you aware that you can opt-out of</p> <p>23 personalized ads when using Chrome?</p> <p>24 A. I believe I recall seeing that in the settings</p> <p>25 features, yeah. 12:22:52</p> <p style="text-align: right;">Page 76</p>
<p>1 it's 1:20 here our time.</p> <p>2 THE WITNESS: It's 12:20.</p> <p>3 MR. LEE: I'm sorry, 12:20 here. I think we can</p> <p>4 go one more session before lunch.</p> <p>5 THE WITNESS: I'm good, yeah. 12:20:02</p> <p>6 MR. LEE: Okay. But I think after the next hour</p> <p>7 block, Andy, we'll probably need to take lunch.</p> <p>8 MR. SCHAPIRO: Whatever is best for the witness</p> <p>9 is fine for us. I happen to be in the Central Time Zone</p> <p>10 as well, so this one will work out nicely. 12:20:14</p> <p>11 MR. LEE: Okay. Great. I forgot about that.</p> <p>12 That's good.</p> <p>13 Q. BY MR. SCHAPIRO: All right. Mr. Davis, you'll</p> <p>14 recall a little bit earlier we were talking about steps</p> <p>15 that you take to protect your privacy. Do you remember 12:20:26</p> <p>16 that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. And are you aware that in Chrome settings you</p> <p>19 can enable a feature called "block all cookies"?</p> <p>20 A. I'll have to take your word for it. I don't 12:20:49</p> <p>21 have specific recollection of that capability.</p> <p>22 Q. Do you know --</p> <p>23 THE REPORTER: Was there an objection, Mr. Lee?</p> <p>24 MR. SCHAPIRO: No. James made a comment.</p> <p>25 MR. LEE: I was being silly. Go ahead. 12:21:06</p> <p style="text-align: right;">Page 75</p>	<p>1 Q. I'm going to pause here. I'm going to ask you</p> <p>2 about some others, but have you -- of this list that</p> <p>3 we've just gone through of features that you can enable,</p> <p>4 do -- do you recall whether you have enabled or used any</p> <p>5 of them in Chrome? 12:23:08</p> <p>6 A. No, I don't have a specific recollection of</p> <p>7 using them. I think I may have deleted sessions and</p> <p>8 cookies before incognito. Like I would manually go do</p> <p>9 that after a browsing session. But once I understood</p> <p>10 that was happening with -- or at least purported to be 12:23:28</p> <p>11 happening with incognito, I stopped that practice.</p> <p>12 Q. You have at least one Google account; is that</p> <p>13 correct?</p> <p>14 A. That's correct, I have one account -- one Google</p> <p>15 account. 12:24:01</p> <p>16 Q. And are you aware that you can visit the "My</p> <p>17 Activity" page to review and manage and delete</p> <p>18 information that Google has associated with your Google</p> <p>19 account?</p> <p>20 A. I don't believe I'm familiar with that. 12:24:16</p> <p>21 Q. And I think you told us a little earlier that</p> <p>22 you -- you have an understanding of what a VPN is but</p> <p>23 you've used it only -- used one only on certain</p> <p>24 occasions; is that correct?</p> <p>25 A. That's correct. 12:24:53</p> <p style="text-align: right;">Page 77</p>

<p>1 Q. And your view in -- in this case is that Google 2 does not alert you that the data -- that your data might 3 be received by Google when you browse the internet in 4 private browsing mode; is that correct?</p> <p>5 A. Yeah, that's -- that's correct. Like, I don't 12:25:15 6 see any disclosure on that primary incognito screen. I 7 don't -- I don't see disclosures saying Google is going 8 to collect -- like, they go out of their way to say what 9 might be visible and what I should be concerned with, but 10 they do not call out themselves as an entity to be 12:25:41 11 concerned with the collection of that data.</p> <p>12 Q. You mentioned a few minutes ago that you've 13 sometimes used private browsing mode with other browsers; 14 correct?</p> <p>15 A. I do. 12:26:03</p> <p>16 Q. And have you ever looked into if you -- whether 17 your data will be sent to Google in the way that you 18 allege happens here when you're using other browsers in 19 private mode as well?</p> <p>20 MR. LEE: Objection to form. 12:26:28</p> <p>21 THE WITNESS: I'm not sure of the relevance of 22 that, and I haven't -- I haven't considered that. I'm 23 focused primarily on Google's claims of their own product 24 and their own browser in the collection.</p> <p>25 I suppose that's something. You're raising a 12:26:46 Page 78</p>	<p>1 Q. When you have an incognito session open, about 2 how long do you usually keep it open?</p> <p>3 Let me make that more clear. Do you ever keep 4 tabs or windows open for -- for more than a day?</p> <p>5 A. Yeah, there's occasions where I do. As a 12:29:03 6 general practice, I generally will close out of the 7 browser session. But there have been occasions where I'm 8 in the middle of researching something or in the middle 9 of working on something and I'll leave it open, suspend 10 the computer, and come back to it the next day. 12:29:22</p> <p>11 Q. How about leaving tabs or windows open for more 12 than a week? Is that something that you commonly do?</p> <p>13 A. There are occasions in which I have, yes.</p> <p>14 Q. Is that common or -- or rare?</p> <p>15 A. It's -- I would say it's -- it's on the rarer 12:29:47 16 side, yeah. Because most of the times I'm getting in, 17 getting out, doing what I need to do. But it does -- 18 there are occasions in which I'll -- yeah, I'll leave 19 them long running.</p> <p>20 Q. So I think earlier in the deposition today you 12:30:09 21 were telling us about your understanding of the -- the 22 incognito splash screen. Do you recall that?</p> <p>23 A. Yes.</p> <p>24 Q. And prior to your involvement in this case, was 25 that splash screen the only document that contributed to 12:30:47 Page 80</p>
<p>1 good question. I should maybe look into that further.</p> <p>2 Q. BY MR. SCHAPIRO: On what devices do you use 3 Chrome?</p> <p>4 A. Sure. I use them on my laptop computers, 5 desktop computers, mobile phone, iPhone. And I believe I 12:27:14 6 even have it installed on an iPad.</p> <p>7 Q. And it sounded like you used plural when you 8 said laptop computers, desktop computers. Do you have 9 more than one laptop, more than one desktop?</p> <p>10 A. I do. I have multiple in my home. Being in the 12:27:35 11 industry, right, computers are pretty common for me.</p> <p>12 Q. And do -- do any other family members or friends 13 ever use any of your devices?</p> <p>14 A. On very rare occasions. Like, if someone needs 15 to get online to do something, I might let them -- I 12:28:00 16 might log them in as a guest on one of the machines.</p> <p>17 But as a practice and a rule, no. Everyone in 18 the home has their own devices and generally stick to 19 those devices.</p> <p>20 Q. And the practice you have of using incognito for 12:28:24 21 your browsing that you just described, is that the same 22 across your devices, or is there some difference 23 depending on what device you're using?</p> <p>24 A. No, it's my general practice, common practice, 25 across all of the devices. 12:28:42 Page 79</p>	<p>1 your understanding or your belief about what incognito 2 does, or were there other documents that you had 3 reviewed?</p> <p>4 MR. LEE: Objection to form, mischaracterizes 5 his prior testimony. 12:31:11</p> <p>6 You can answer.</p> <p>7 THE WITNESS: Yeah. No, so I had reviewed both 8 the Google Terms of Service, the Google Privacy Policy, 9 as well as material, maybe blog posts, on incognito. So 10 I was not solely informed by the splash screen. 12:31:27</p> <p>11 Q. BY MR. SCHAPIRO: And this is -- so this prior 12 to involvement in the lawsuit, you had looked at, you 13 say, the Privacy Policy and maybe some blog posts?</p> <p>14 A. That's correct.</p> <p>15 Q. By the way, you said that when you saw the story 12:31:55 16 or advertisement about this lawsuit, it peaked your 17 interest. Had you, prior to that point, ever seen any 18 articles or blog posts suggesting that incognito -- not 19 by Google, suggesting that incognito mode might not be 20 private in the way that you expected? 12:32:23</p> <p>21 MR. LEE: Hold on.</p> <p>22 I just want to object to the extent that you are 23 mischaracterizing Mr. Davis' testimony. He did not -- he 24 did not testify that he responded to an advertisement.</p> <p>25 MR. SCHAPIRO: I withdraw the point about the 12:32:37 Page 81</p>

<p>1 advertisement.</p> <p>2 Q. So my question, nevertheless, is: You said when</p> <p>3 you saw this, I'll just say a story about this lawsuit,</p> <p>4 it piqued your interest. And I was asking prior to that</p> <p>5 point, had you ever seen any articles or blog posts, 12:32:53</p> <p>6 presumably not from Google, suggesting -- causing you to</p> <p>7 suspect or suggesting that incognito might not be private</p> <p>8 in the way you had thought?</p> <p>9 A. Fairly recently, prior to the case, I believe</p> <p>10 there was a journal entry or a hypothetical post that 12:33:19</p> <p>11 said it was hypothetically possible that Google could be</p> <p>12 aggregating information. I think there was an article</p> <p>13 written about that. And I even think I recall reading</p> <p>14 Google responding to that article and saying that they --</p> <p>15 perhaps that they did not. 12:33:42</p> <p>16 And so that's my recollection of any materials</p> <p>17 that might have indicated that maybe things were not as</p> <p>18 they appear with regard to incognito.</p> <p>19 Q. And do you remember about how long before the</p> <p>20 lawsuit that was? 12:34:04</p> <p>21 A. I'm pretty sure it was within a year. Like, it</p> <p>22 was less than a year.</p> <p>23 Q. And then since filing the lawsuit, I believe you</p> <p>24 told us earlier that you continued to use Chrome because</p> <p>25 you didn't want to change your -- your activity. Am I 12:34:35</p> <p style="text-align: right;">Page 82</p>	<p>1 and the Google Privacy Policy.</p> <p>2 I'm not a lawyer. I'm sure there may be other</p> <p>3 documents that the Court considers constitution to that</p> <p>4 contract, but that's my understanding in this case.</p> <p>5 Q. Recognizing that you're not a lawyer, but do you 12:36:40</p> <p>6 have any thoughts, as the person who entered into the</p> <p>7 contract, of what other documents might be part of it? I</p> <p>8 think you just listed the splash screen, the Google Terms</p> <p>9 of Service and the Google Privacy Policy.</p> <p>10 You said maybe there are some others. Any 12:37:00</p> <p>11 thoughts on what those might be?</p> <p>12 A. Oh, yeah, the other one I think that's of</p> <p>13 interest may be in the health file related to Google</p> <p>14 Analytics. I believe it made specific mention of the</p> <p>15 Google Privacy Policy. That would be one additional I 12:37:17</p> <p>16 would add to that list.</p> <p>17 And it said that Google Analytics would adhere</p> <p>18 to the Privacy Policy, which clearly states that I am put</p> <p>19 in control of what information Google collects about me</p> <p>20 and that we can use Google services to manage our 12:37:38</p> <p>21 privacy. And if I choose to browse privately, I can</p> <p>22 browse the web privately using Chrome in incognito mode.</p> <p>23 And so the way that I would assert that privacy</p> <p>24 would be to use incognito mode.</p> <p>25 Q. And in connection with this contract, did you 12:38:04</p> <p style="text-align: right;">Page 84</p>
<p>1 characterizing that right?</p> <p>2 A. Yeah. I thought it would be best to be</p> <p>3 consistent with my activity during the course of the</p> <p>4 lawsuit.</p> <p>5 Q. While you're continuing to use Chrome, have you 12:34:52</p> <p>6 taken any -- have you taken any steps to -- to prevent</p> <p>7 what you contend is the improper collection of your</p> <p>8 information?</p> <p>9 A. Again, I'll restate. I haven't changed my</p> <p>10 behavior. I've kept my behavior consistent since the 12:35:17</p> <p>11 lawsuit started.</p> <p>12 Q. And by that, I assume that means including the</p> <p>13 things like extensions, add-ons, settings, et cetera?</p> <p>14 A. Yeah, I have not taken additional action or</p> <p>15 leveraged any of those capabilities. If you're -- if 12:35:34</p> <p>16 you're specifically asking me, like, have I installed the</p> <p>17 ad blocker or the ad -- extension add-on, the answer is</p> <p>18 no. I have not made use of those things you mentioned</p> <p>19 earlier in the call.</p> <p>20 Q. Mr. Davis, do you believe that you entered into 12:36:01</p> <p>21 a contract with Google?</p> <p>22 A. The answer is yes. And not only do I believe</p> <p>23 that, I believe the Court has affirmed that a contract</p> <p>24 exists. Not excluding -- not exclusive to, but I believe</p> <p>25 including the splash screen, the Google Terms of Service 12:36:23</p> <p style="text-align: right;">Page 83</p>	<p>1 provide anything to Google in return to the use of</p> <p>2 Chrome?</p> <p>3 A. Of course. I provided my activity and data;</p> <p>4 right? Clearly that -- there is value to the data</p> <p>5 provided. And that is -- that is the -- that is the 12:38:37</p> <p>6 exchange of the parties in that contract; right?</p> <p>7 Q. So you agreed to provide data to Google?</p> <p>8 A. In normal -- in normal browsing mode. Nowhere</p> <p>9 in the Terms of Service, the Google Privacy Policy or the</p> <p>10 splash screen did it provide me an opportunity to consent 12:39:03</p> <p>11 to the exchange of data while in incognito mode.</p> <p>12 Again, Google tells me I can browse privately.</p> <p>13 I have no expectation of exchange of data when in</p> <p>14 incognito mode.</p> <p>15 Q. Can you take a look at paragraph 275 of the 12:39:20</p> <p>16 Complaint, the Second Amended Complaint?</p> <p>17 A. Sure. Let me just turn to it. You said 275?</p> <p>18 Q. Yes, sir.</p> <p>19 A. It's almost to the end. Let's see. Okay. I</p> <p>20 have it in front of me. 12:40:03</p> <p>21 Q. Do you see where it says, "Plaintiffs and class</p> <p>22 members also did not receive the benefit of the bargain</p> <p>23 for which they contracted and for which they paid</p> <p>24 valuable consideration in the form of the personal</p> <p>25 information they agreed to share, which has ascertainable 12:40:20</p> <p style="text-align: right;">Page 85</p>

<p>1 Q. It's between lines 5 and 6. And it has the 2005 2 date.</p> <p>3 MR. LEE: Why don't you read the whole 4 paragraph?</p> <p>5 MR. SCHAPIRO: James, I won't object, even 12:46:36 6 though you're in the same room, if you want to point, 7 but...</p> <p>8 MR. LEE: No. I'm sorry. I just told him it 9 would be easier if he read the whole paragraph.</p> <p>10 THE WITNESS: That's what I'm saying. I can't 12:46:49 11 locate it on the page. I don't think I'm on the same 12 page you are.</p> <p>13 Q. BY MR. SCHAPIRO: So we're in Exhibit 8. 14 Exhibit 8. And it is -- I don't know if there's a page 15 number, but it's the Amended -- 12:47:01</p> <p>16 A. "Notwithstanding" -- is it line 10 and 11?</p> <p>17 THE WITNESS: Or which lines was he saying?</p> <p>18 Q. BY MR. SCHAPIRO: I'm sorry, Exhibit 7. 19 Exhibit 7. No, Exhibit 8.</p> <p>20 A. Oh, I'm in the wrong exhibit. 12:47:17</p> <p>21 Q. No, no, I'm wrong. It is Exhibit 8. I was 22 there a second ago.</p> <p>23 A. Okay. I see it now. Okay. Thank you.</p> <p>24 Q. Okay. Sorry about that.</p> <p>25 A. Let me just read this really quickly. 12:47:29 Page 90</p>	<p>1 out this copyright point. But I -- my understanding is 2 that this is the Terms of Service that were in effect 3 through November -- from March 29th, 2003, to 4 November 4th, 2005.</p> <p>5 MR. LEE: And are you making that representation 12:49:40 6 to this witness today?</p> <p>7 MR. SCHAPIRO: I'm making that representation to 8 this witness today. And if I'm wrong, we can, of course, 9 clear it up later, but...</p> <p>10 MR. LEE: Okay. 12:49:50</p> <p>11 THE WITNESS: So if you don't mind, I'd like to 12 read through this just to see if it's familiar to me. 13 There's a lot of information here, and it's quite old.</p> <p>14 Q. BY MR. SCHAPIRO: Of course. You're entitled. 15 A. Okay. Thanks for give me the opportunity to 12:50:54 16 review.</p> <p>17 Q. All right. Do you recall if you agreed to the 18 Google Terms of Service when you opened your account?</p> <p>19 A. I would have absolutely had to. I think it was 20 a prerequisite to get the account, is my recollection. 12:51:08</p> <p>21 Q. And in these Terms of Service, did Google 22 represent to you that you could control what information 23 Google collects by enabling private browsing mode?</p> <p>24 A. I don't think that was temporarily possible, 25 because I don't think incognito existed at this time, 12:51:30 Page 92</p>
<p>1 Q. Sure.</p> <p>2 A. Sure. So we must have checked the dates around 3 that time, then.</p> <p>4 Q. Okay. So you can -- I don't have any other 5 questions about this exhibit. 12:47:50</p> <p>6 But let's take a look at Exhibit 7, which is the 7 Google Terms of Service that were effective through 8 November 4th, 2005.</p> <p>9 A. Okay. I have that document up.</p> <p>10 Q. And I'll ask you if you remember which portions 12:48:12 11 you reviewed. Did you review only certain portions or 12 all of it?</p> <p>13 A. I'm just checking to see how familiar this is. 14 This is from 2001 to 2003; is that right?</p> <p>15 Q. My understanding is this is 2003 to 2005. 12:48:46</p> <p>16 A. I only ask that question because it's 17 copyrighted 2001/2003.</p> <p>18 Q. I think that's just when the copyright was. I 19 don't know.</p> <p>20 MR. LEE: Yeah, Mr. Schapiro, I think you need 12:49:05 21 to make a representation of the date. You either know -- 22 you can make that representation or you don't. I don't 23 think we can say --</p> <p>24 MR. SCHAPIRO: Yeah, my understanding, but I 25 want to be careful, because the witness has just pointed 12:49:15 Page 91</p>	<p>1 when -- when Gmail was first launched.</p> <p>2 Q. So I'll ask you to take a look at the Second 3 Amended Complaint again, paragraph 31, please.</p> <p>4 A. Paragraph 31?</p> <p>5 Q. Yes, sir. 12:51:56</p> <p>6 A. Okay. I'm there.</p> <p>7 Q. And do you see there's a citation to the Google 8 Privacy Policy? And this is in the -- to the May -- the 9 May 28th -- I guess in the Complaint it just says, 10 "May 2018 modification to the Privacy Policy." 12:52:32</p> <p>11 Do you see that?</p> <p>12 A. Yes, I see that line.</p> <p>13 Q. And do you know whether you reviewed that 14 version of the -- ever reviewed that version of the 15 Privacy Policy? 12:52:45</p> <p>16 A. I did.</p> <p>17 Q. And do you recall whether that was before or 18 after your involvement in this litigation?</p> <p>19 A. Yes, I believe I rereviewed it when the 20 incognito feature was launched. And this seems to be 12:52:58 21 aligned with that timeline.</p> <p>22 Q. And did you agree to the Google Privacy Policy?</p> <p>23 MR. LEE: Objection to form.</p> <p>24 THE WITNESS: I don't know -- I don't know that 25 there's -- like, you agree to Terms of Service; right? 12:53:17 Page 93</p>

<p>1 But I don't believe there's a -- I just don't understand 2 the question. Did I agree to it?</p> <p>3 Q. BY MR. SCHAPIRO: Did you ever indicate -- 4 A. Did I agree with the terms? Or did I -- did I 5 agree with what they were communicating? Or are you 12:53:33 6 asking if I told Google that I agreed to the Privacy 7 Policy? I'm just unclear on your question. 8 Q. Did you ever indicate to Google in any way that 9 you did not agree to its Privacy Policy?</p> <p>10 MR. LEE: Objection to form. 12:53:51 11 THE WITNESS: No. No. To my recollection, I 12 never told Google that I disagreed with its statements in 13 its updated Privacy Policy.</p> <p>14 Q. BY MR. SCHAPIRO: Let's take a look at the -- 15 what I will represent to you is the updated Privacy 12:54:08 16 Policy referred to in your Complaint, effective from 17 May 28th, 2018, to January 21st, 2019. 18 (Exhibit 9, Google Privacy Policy, marked for 19 identification electronically by counsel.)</p> <p>20 Q. BY MR. SCHAPIRO: And can you tell me what 12:54:36 21 sections in here, if any, you believe promised you that 22 browsing in private mode would prevent Google from 23 receiving your information?</p> <p>24 A. One second. This is the evidence 12 -- or 25 the -- 12:55:08</p> <p style="text-align: right;">Page 94</p>	<p>1 paragraph that begins with, "You can use our services in 2 a variety of ways." 3 Do you see that?</p> <p>4 Q. BY MR. SCHAPIRO: Yeah. 5 A. That first sentence, "You can use our services 12:56:30 6 in a variety of ways to manage your privacy." 7 Again, the assertion of privacy and the Privacy 8 Policy from Google to its users. 9 The last two sentences of that paragraph, I'd 10 like to read. "You can also choose to browse the web 12:56:51 11 privately using Chrome in incognito mode." You've heard 12 me say that numerous times today. 13 Next sentence, "And across our services, you can 14 adjust your privacy settings to control what we collect 15 and how your information is used." 12:57:10 16 Again, this implies to me that Google is stating 17 that I have control; right? And that any data that I 18 provide to Google, I can -- I would explicitly consent to 19 their collection of that data. 20 They have stated that I can browse privately 12:57:32 21 using Chrome in incognito mode. I've -- I've testified 22 earlier that when I am browsing privately, I never 23 consent to collection. 24 So, again, in the Privacy Policy, I'm taking 25 Google at their words that when I am browsing privately, 12:57:51</p> <p style="text-align: right;">Page 96</p>
<p>1 Q. Yes. Exhibit 12, yeah. 2 A. -- Exhibit 12? 3 MR. LEE: You have a paper copy, too. 4 Q. BY MR. SCHAPIRO: Yeah, if you have a paper 5 copy, you can look at it as well. 12:55:18 6 A. Yeah. The paper copy I have has section numbers 7 on it. And this one -- 8 MR. LEE: No. 9 THE WITNESS: Oh, sorry. No, it's the Privacy 10 Policy. Excuse me. 12:55:30 11 Yeah, just one second. 12 Yeah, I can call out the specific language in 13 the Privacy Policy. 14 So at the end of the first sentence, there are 15 the words "Put you in control"; right? So I understand, 12:55:47 16 through Google's Privacy Policy, that I am in control; 17 right? 18 Q. BY MR. SCHAPIRO: Do you believe that -- 19 MR. LEE: Wait. Were you done with your answer? 20 Excuse me. Excuse me. I'm not sure he was 12:56:06 21 done. I just want to confirm. 22 THE WITNESS: No, I wasn't. I wasn't. 23 MR. LEE: Why don't you finish. 24 THE WITNESS: If you scroll further down, below 25 the three bullet points on the first page, there's a 12:56:17</p> <p style="text-align: right;">Page 95</p>	<p>1 that is the method by which I notify Google that I do not 2 consent to collection. 3 Q. Are you finished? 4 A. Yes, I'm finished. Thank you. 5 Q. So you have emphasized the use of this word 12:58:24 6 "control"; correct? 7 A. Correct. 8 Q. And so what have you done -- strike that. 9 And it says that -- the Privacy Policy says that 10 you can control -- or that you can -- that they can -- 12:59:00 11 that Google puts you in control. Is that a fair 12 paraphrase of that first sentence that you've cited? 13 A. That's -- yes. 14 Q. So what -- so being in control, what did you do 15 to prevent Google from receiving, let's say, your IP 12:59:27 16 address when you visited a site that ran Google 17 Analytics? How did you exercise that control? 18 A. So the control that I exercised is I used the 19 feature incognito mode in Chrome that they expressly 20 called out in this Privacy Policy as a means for me to 12:59:49 21 privately browse the web. 22 So, again, my control in this situation, the 23 recourse that Google has indicated to me in their own 24 Privacy Policy, that if I want to browse privately and 25 not be observed by Google, is to use Chrome in incognito 13:00:12</p> <p style="text-align: right;">Page 97</p>

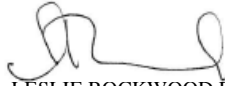
<p>1 your time.</p> <p>2 MR. LEE: Thanks, everybody.</p> <p>3 THE VIDEOGRAPHER: This completes today's</p> <p>4 deposition. We're going off the record. The time is</p> <p>5 4:29 p.m. 16:29:21</p> <p>6 (Time Noted: 4:29 p.m.)</p> <p>7 --oOo--</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 178</p>	<p>1 STATE OF CALIFORNIA) ss:</p> <p>2 COUNTY OF MARIN)</p> <p>3</p> <p>4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do</p> <p>5 hereby certify:</p> <p>6 That the foregoing deposition testimony was</p> <p>7 taken before me at the time and place therein set forth</p> <p>8 and at which time the witness was administered the oath;</p> <p>9 That testimony of the witness and all objections</p> <p>10 made by counsel at the time of the examination were</p> <p>11 recorded stenographically by me, and were thereafter</p> <p>12 transcribed under my direction and supervision, and that</p> <p>13 the foregoing pages contain a full, true and accurate</p> <p>14 record of all proceedings and testimony to the best of my</p> <p>15 skill and ability.</p> <p>16 I further certify that I am neither counsel for</p> <p>17 any party to said action, nor am I related to any party</p> <p>18 to said action, nor am I in any way interested in the</p> <p>19 outcome thereof.</p> <p>20 IN WITNESS WHEREOF, I have subscribed my name</p> <p>21 this 11th day of January, 2022.</p> <p>22</p> <p>23</p> <p>24 </p> <p>25 LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462</p> <p style="text-align: right;">Page 180</p>
<p>1 I declare under the penalty of perjury under the</p> <p>2 laws of the State of California that the foregoing is</p> <p>3 true and correct.</p> <p>4 Executed on _____, 2022, at</p> <p>5 _____, _____.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 179</p>	<p>1 JAMES LEE, ESQ.</p> <p>2 jlee@bsflp.com</p> <p>3 January 11, 2022</p> <p>4 RE: BROWN VS. GOOGLE LLC</p> <p>5 JANUARY 7, 2022, JEREMY DAVIS, JOB NO. 5019103</p> <p>6 The above-referenced transcript has been</p> <p>7 completed by Veritext Legal Solutions and</p> <p>8 review of the transcript is being handled as follows:</p> <p>9 ___ Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext</p> <p>10 to schedule a time to review the original transcript at</p> <p>11 a Veritext office.</p> <p>12 ___ Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF</p> <p>13 Transcript - The witness should review the transcript and</p> <p>14 make any necessary corrections on the errata pages included</p> <p>15 below, notating the page and line number of the corrections.</p> <p>16 The witness should then sign and date the errata and penalty</p> <p>17 of perjury pages and return the completed pages to all</p> <p>18 appearing counsel within the period of time determined at</p> <p>19 the deposition or provided by the Code of Civil Procedure.</p> <p>20 ___ Waiving the CA Code of Civil Procedure per Stipulation of</p> <p>21 Counsel - Original transcript to be released for signature</p> <p>22 as determined at the deposition.</p> <p>23 ___ Signature Waived – Reading & Signature was waived at the</p> <p>24 time of the deposition.</p> <p>25</p> <p style="text-align: right;">Page 181</p>

EXHIBIT 27

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE
TRUJILLO, individually and on
behalf of all other similarly
situated,

Plaintiffs,

vs.

No.

5:20-cv-03664-LHK-SVK

GOOGLE LLC,

Defendant.

_____ /

VIDEOTAPED DEPOSITION OF CHASOM BROWN
Remote Zoom Proceedings
Los Angeles, California
Thursday, January 13, 2022

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

Pages 1 - 208

Job No. 5028094

Page 1

<p>1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF CALIFORNIA 3 4 5 6 CHASOM BROWN, WILLIAM BYATT, 7 JEREMY DAVIS, CHRISTOPHER 8 CASTILLO, and MONIQUE 9 TRUJILLO, individually and on 10 behalf of all other similarly 11 situated, 12 13 Plaintiffs, 14 15 vs. No. 16 5:20-cv-03664-LHK-SVK 17 18 GOOGLE LLC, 19 20 Defendant. 21 _____/ 22 23 24 25</p> <p>Videotaped deposition of CHASOM BROWN, taken on behalf of the Defendant, Remote Zoom Proceedings from Los Angeles, California, beginning at 9:52 a.m. Pacific Standard Time and ending at 5:20 p.m. Pacific Standard Time, on Thursday, January 13, 2022, before Leslie Rockwood Rosas, RPR, Certified Shorthand Reporter No. 3462.</p>	<p>1 APPEARANCES (Continued): 2 3 FOR THE DEFENDANT: 4 QUINN EMANUEL URQUHART & SULLIVAN, LLP 5 BY: SARA JENKINS, ESQ. 6 TRACY XI GAO, ESQ. 7 555 Twin Dolphin Drive, 5th Floor 8 Redwood Shores, California 94065 9 (650) 801-5040 10 sarajenkins@quinnemanuel.com 11 tracygao@quinnemanuel.com 12 13 14 Also Present: 15 Scott Slater, Videographer 16 17 18 19 20 21 22 23 24 25</p>
<p>1 APPEARANCES: 2 3 FOR THE PLAINTIFFS: 4 BOIES SCHILLER FLEXNER LLP 5 BY: JAMES LEE, ESQ. 6 100 SE Second Street, Suite 2800 7 Miami, Florida 33131 8 (305) 539-8400 9 jlee@bsflp.com 10 11 BY: HSIAO (MARK) C. MAO, ESQ. 12 44 Montgomery Street, 41st Floor 13 San Francisco, California 91401 14 (415) 293-6800 15 mmao@bsflp.com 16 17 MORGAN & MORGAN 18 BY: RYAN MCGEE, ESQ. 19 201 North Franklin Street, 7th Floor 20 Tampa, Florida 33602 21 (813) 223-5505 22 rmcgee@forthepeople.com 23 24 25</p>	<p>1 I N D E X 2 3 4 THURSDAY, JANUARY 13, 2022 5 6 WITNESS EXAMINATION 7 CHASOM BROWN 8 9 BY MS. JENKINS 11, 201 10 BY MR. LEE 195 11 12 13 14 15 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER: 16 Page Line 17 56 7 18 155 1 19 202 3 20 21 22 23 24 25</p>

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<p>1 Q. Did you appear in court for that small claims 2 case?</p> <p>3 A. Yeah. Yes, I did.</p> <p>4 Q. And where was that court located?</p> <p>5 A. In Westminster, California. 10:16:04</p> <p>6 Q. Do you know approximately what year that was?</p> <p>7 A. Around the -- around 2007, give or take a 8 couple -- a couple of years. I'm sorry if I'm off on 9 that.</p> <p>10 Q. That's okay. 10:16:28</p> <p>11 Would you say that maintaining the privacy of 12 your information while you're browsing the internet is 13 important to you?</p> <p>14 A. Yeah, I would say it is.</p> <p>15 Q. And why is that? 10:16:45</p> <p>16 A. I -- I think privacy in general is important, 17 like on the internet, off the internet. So probably not 18 more than the average person, but I do think it is 19 important.</p> <p>20 Q. Do you take precautions to protect your privacy 10:17:06 21 while you're on the internet?</p> <p>22 A. Yeah.</p> <p>23 Q. And what -- what do you -- what precautions do 24 you take?</p> <p>25 A. Well, I was going in Incognito mode. 10:17:24</p> <p style="text-align: right;">Page 26</p>	<p>1 So I guess that's how I make the decision.</p> <p>2 Sometimes it's ease and then sometimes it's content.</p> <p>3 Q. And what types of content would you be likely to 4 accept cookies for?</p> <p>5 A. I guess something that's benign, that I don't 10:19:11</p> <p>6 consider private in any way, or something that maybe if I 7 am doing some shopping and I would like, you know, some 8 more tailored ads or something like that, like I'm -- in 9 those instances, I'm -- I'm perfectly fine clicking on 10 that button. 10:19:34</p> <p>11 Q. And you said if it's benign. What types of 12 information would you consider to be benign that you're 13 not worried about accepting cookies for?</p> <p>14 A. Looking up at the score of my favorite sports 15 team or maybe something that I'm shopping or something 10:19:55</p> <p>16 along those lines. Those seem pretty benign to me.</p> <p>17 Q. What about like reading the news; would you 18 consider that to be benign?</p> <p>19 MR. LEE: Objection to form.</p> <p>20 THE WITNESS: Is -- I guess it depends on the 10:20:21</p> <p>21 contents. Some things seem to be a little more 22 contentious and things like that. So I don't know. I 23 think there's a sensitivity if I'm reading about pottery 24 versus my -- my feeling about lesbian rights or 25 something. 10:20:46</p> <p style="text-align: right;">Page 28</p>
<p>1 Q. And what other precautions?</p> <p>2 A. I think now and again, there are some options to 3 change settings or cookie settings, things like that, and 4 so when things pop up, I generally -- generally will try 5 to look at them and see if something makes sense or not 10:17:46 6 for what I'm doing.</p> <p>7 Q. And so by that, do you mean that some -- that 8 sometimes when given the option, you will opt out of 9 cookies? Is that accurate?</p> <p>10 A. Yeah, sometimes. Or like if -- and I don't know 10:18:06 11 if this really works, but sometimes not accepting the 12 cookies when I'm on a website real quick. I sometimes 13 will avoid that if I can or have to, or if I have the 14 option, I guess.</p> <p>15 Q. And sometimes do you allow cookies when given 10:18:24 16 the option?</p> <p>17 A. Sometimes.</p> <p>18 Q. How do you make that decision about whether to 19 allow cookies or not?</p> <p>20 A. Well, sometimes they're kind of tricky, and 10:18:35 21 they -- they put it in a place where you would 22 accidentally hit it. So I do, and it happens, and then 23 sometimes you -- you have to give an answer, and then -- 24 and then sometimes the content of what I'm going on, it 25 really doesn't bother me or I'm fine with giving cookies. 10:18:52</p> <p style="text-align: right;">Page 27</p>	<p>1 Q. BY MS. JENKINS: All right. And are there types 2 of websites where you would always object to cookies to 3 the extent that you can or types of information where you 4 would think that it's sensitive that you always want to 5 object to cookies? 10:21:02</p> <p>6 A. No, I don't think I have any -- any hard lines 7 in that sense. Like generally, if I'm really concerned 8 about the content I would go into, I would go into 9 Incognito mode.</p> <p>10 Q. All right. Other than Incognito mode and 10:21:23 11 sometimes objecting to cookies, are there any other 12 precautions you take to protect your privacy on the 13 internet?</p> <p>14 A. Nothing's coming to mind.</p> <p>15 Q. Okay. Are you in particular concerned about 10:21:39 16 information that Google collects from you as opposed to 17 other web entities that may also be collecting 18 information?</p> <p>19 A. I think both. Like -- like Google obviously is, 20 you know, a juggernaut when it comes to information and 10:22:03 21 data collection, and so to a degree, I'm probably a 22 little more concerned versus some minor small website.</p> <p>23 But I think in general, I think both. I'm 24 concerned about, you know, data privacy, data collection.</p> <p>25 Q. What have you done to understand Google's data 10:22:26</p> <p style="text-align: right;">Page 29</p>

<p>1 collection?</p> <p>2 MR. LEE: Again, Mr. Brown, I think you can</p> <p>3 answer this question, but you should do it without</p> <p>4 revealing any communications you've had with your</p> <p>5 attorneys. 10:22:45</p> <p>6 THE WITNESS: What have I done to understand</p> <p>7 data collection? Probably -- well, not probably. I've</p> <p>8 done some reading. And I've read like Google about some</p> <p>9 items, like the Terms of Service. So I've gone through</p> <p>10 and read -- more things come to me I would say than I go 10:23:08</p> <p>11 seek as far as data collection, like when you're saying,</p> <p>12 oh, hey, if the cookies comes up, or if like some things</p> <p>13 will pop up, and then you have the opportunity to learn a</p> <p>14 little bit about what you're doing, what you're reading,</p> <p>15 what data is being collected and isn't. 10:23:24</p> <p>16 And so I've probably been a little more vigilant</p> <p>17 with looking at stuff -- you know, a lot of it's right</p> <p>18 there so you can kind of see what's happening.</p> <p>19 Q. BY MS. JENKINS: Prior to becoming involved in</p> <p>20 this lawsuit, had you reviewed Google's disclosures about 10:23:44</p> <p>21 what data it collects?</p> <p>22 A. Just your -- yes.</p> <p>23 Q. Do you know which disclosures you had reviewed?</p> <p>24 A. Well, just in -- not the top of my head, but I</p> <p>25 do -- like I've seen the Google Terms of Service. I've 10:24:09</p> <p style="text-align: right;">Page 30</p>	<p>1 A. I don't find it odd when I'm doing normal</p> <p>2 searching and I get an advertisement later for that,</p> <p>3 so...</p> <p>4 Q. Okay. So can you help me understand in what --</p> <p>5 what sort of thing you would consider odd? 10:26:25</p> <p>6 A. If -- like, you know -- you know how a lot of</p> <p>7 people say that, oh, we were just talking about something</p> <p>8 and then all the sudden we got this ad for it. Or if I</p> <p>9 was browsing something in Incognito mode and, you know, I</p> <p>10 got an ad for it. Or if -- like I'm assuming through a 10:26:46</p> <p>11 pattern of things that I look for, something pops up,</p> <p>12 like that's just some advertising that is tailored to me</p> <p>13 seemed odd. It seemed like I -- I would like to inquire</p> <p>14 about this.</p> <p>15 Q. You mentioned when you're browsing in Incognito 10:27:12</p> <p>16 mode and you receive an ad. Do you mean that within a</p> <p>17 specific Incognito session, ads that you might receive</p> <p>18 within that session, you would find that odd to be</p> <p>19 receiving ads, or do you mean something else?</p> <p>20 A. Again, I don't recall exactly what it was, but 10:27:37</p> <p>21 it was just, you know, a pattern of ads that made me</p> <p>22 think, hmm, that's odd.</p> <p>23 Q. Okay. Is it important for you to know what</p> <p>24 information websites other than Google are collecting</p> <p>25 when you're browsing the web? 10:27:57</p> <p style="text-align: right;">Page 32</p>
<p>1 seen the privacy policy.</p> <p>2 Q. And -- and did you do any outside research</p> <p>3 trying to understand what data Google -- Google was</p> <p>4 collecting?</p> <p>5 A. Not that I recall. I mainly just went straight 10:24:34</p> <p>6 to the source and went into what Google was saying.</p> <p>7 Q. When you mentioned before that you had seen some</p> <p>8 odd things, odd things happening with advertising, was</p> <p>9 that specifically when you were browsing on the Chrome</p> <p>10 browser? 10:24:55</p> <p>11 A. I -- as I stated before, I don't exactly recall,</p> <p>12 and I don't want to mislead you.</p> <p>13 Q. And if you've already stated this, I apologize,</p> <p>14 but as far as the odd things that were happening with</p> <p>15 advertising, can you provide a better description of what 10:25:17</p> <p>16 was happening that you considered to be odd?</p> <p>17 A. You know, sometimes you get advertisements that</p> <p>18 seemed tailored -- tailored to yourself, and you're</p> <p>19 wondering how -- how did they -- how did they tailor that</p> <p>20 to me, or is it a coincidence or that's an odd 10:25:43</p> <p>21 coincidence. So -- but it was along those lines.</p> <p>22 Q. Would it have been times when you had been</p> <p>23 searching for something on the internet and then later</p> <p>24 received advertisements for products that are related to</p> <p>25 those searches that you had been performing? 10:26:02</p> <p style="text-align: right;">Page 31</p>	<p>1 A. It would be nice.</p> <p>2 Q. Do you review privacy policies of other websites</p> <p>3 that you visit on the web?</p> <p>4 A. Yeah, sometimes.</p> <p>5 Q. When you read those privacy policies, would you 10:28:22</p> <p>6 expect the websites to tell you that they may be sharing</p> <p>7 your data with business partners if they're doing that?</p> <p>8 A. I guess I have the expectation that anybody</p> <p>9 who's giving a privacy policy is being transparent and</p> <p>10 accurate as to what they're doing and what they're 10:28:44</p> <p>11 collecting so I can understand what's happening as a</p> <p>12 consumer and a user.</p> <p>13 THE REPORTER: Excuse me, Sara. Someone is at</p> <p>14 my door. Can we take a five-minute break?</p> <p>15 MR. LEE: Sure. 10:29:06</p> <p>16 MS. JENKINS: Yeah, sure. That's fine.</p> <p>17 THE VIDEOGRAPHER: We are off the record. The</p> <p>18 time is 10:19 a.m.</p> <p>19 (Recess.)</p> <p>20 THE VIDEOGRAPHER: We are back on the record. 10:38:34</p> <p>21 The time is 10:39 a.m.</p> <p>22 Q. BY MS. JENKINS: All right. Mr. Brown, is it</p> <p>23 important for you to know what data websites are</p> <p>24 collecting about you?</p> <p>25 A. Yeah, that would be very nice to know. I would 10:39:17</p> <p style="text-align: right;">Page 33</p>

<p>1 like to know that.</p> <p>2 Q. And do you take any action to try to determine</p> <p>3 what data websites might be collecting about you?</p> <p>4 A. I don't think I take any specific action to</p> <p>5 know. I think I have an idea of the general things that 10:39:38</p> <p>6 are collected.</p> <p>7 Q. And what is that general idea?</p> <p>8 A. Several identifiers about myself, my location,</p> <p>9 my habits, my browsing, my preferences, my -- my IP</p> <p>10 address, my -- pretty much everything -- everything about 10:40:04</p> <p>11 me. The old cliché, like Google knows you better than</p> <p>12 your own family; right?</p> <p>13 Q. Okay. Would you expect a website other than</p> <p>14 Google to put in their privacy policy if they were</p> <p>15 sending any data they've collected about you to Google? 10:40:31</p> <p>16 MR. LEE: Are you talking about in normal mode</p> <p>17 or Incognito mode?</p> <p>18 MS. JENKINS: Well, I'm just talking about in</p> <p>19 general about what is on the privacy policy.</p> <p>20 You can answer if you understand. 10:40:49</p> <p>21 THE WITNESS: I -- I would expect there to be,</p> <p>22 you know, transparency. And if they were sending data in</p> <p>23 Incognito mode, yes, I would expect there to be</p> <p>24 transparency to that.</p> <p>25 Q. BY MS. JENKINS: Would you want a website that 10:41:14</p> <p style="text-align: right;">Page 34</p>	<p>1 Q. And how frequently do you visit that website</p> <p>2 using Incognito mode?</p> <p>3 A. I don't know exactly. I guess that would be</p> <p>4 if -- yeah, I don't know exactly.</p> <p>5 Q. Do you believe you have visited that website 10:43:22</p> <p>6 using Incognito mode?</p> <p>7 A. Yeah, I believe I have.</p> <p>8 Q. You've read the Redfin privacy policy?</p> <p>9 A. Yeah, I'm sure -- I'm sure it's come up.</p> <p>10 Q. When you read privacy policies, do you pay 10:43:41</p> <p>11 special attention to the section discussing what</p> <p>12 information is collected about you?</p> <p>13 MR. LEE: Objection to "special attention,"</p> <p>14 vague.</p> <p>15 THE WITNESS: Yeah, I -- I pay attention to if 10:44:09</p> <p>16 they're -- like generally I would like to know what</p> <p>17 they're collecting or not, and I would like to know if --</p> <p>18 and I haven't seen it, but I would like -- I would like</p> <p>19 to know if they are sending data and it's being</p> <p>20 collected. But let me rephrase that. 10:44:37</p> <p>21 I would like to know -- like can you repeat the</p> <p>22 question? I'm losing myself here trying to answer this.</p> <p>23 Q. BY MS. JENKINS: The question was when you read</p> <p>24 privacy policies, do you pay special attention to the</p> <p>25 section discussing what information is being collected 10:44:53</p> <p style="text-align: right;">Page 36</p>
<p>1 you're visiting to know whether you are in Incognito mode</p> <p>2 or not?</p> <p>3 A. If I'm in Incognito mode, I don't want any --</p> <p>4 anybody to know anything. That's the point.</p> <p>5 Q. So would it be correct to say you wouldn't want 10:41:36</p> <p>6 a website to know that you're in Incognito mode if you're</p> <p>7 browsing that website using Incognito mode?</p> <p>8 MR. LEE: Objection to the extent this is a</p> <p>9 hypothetical question, it's an incomplete hypothetical.</p> <p>10 THE WITNESS: I would think there would -- it's 10:42:01</p> <p>11 almost like the "chicken and the egg" question you're</p> <p>12 asking me, like how will they know I'm in Incognito mode</p> <p>13 unless they know I'm in Incognito mode.</p> <p>14 I don't know -- like I guess my answer is: I</p> <p>15 don't want -- in Incognito mode, I don't want anybody to 10:42:17</p> <p>16 know anything about me. That's why I go into Incognito</p> <p>17 mode.</p> <p>18 The technicals of how that can happen I'm sure</p> <p>19 are figured out or could be figured out. But I feel like</p> <p>20 I would go on this weird like feedback loop if it's -- 10:42:37</p> <p>21 like I feel like it's a "chicken and the egg" question a</p> <p>22 little bit.</p> <p>23 Q. BY MS. JENKINS: All right. How frequently do</p> <p>24 you visit the Redfin website?</p> <p>25 A. Maybe once a month. 10:42:59</p> <p style="text-align: right;">Page 35</p>	<p>1 about you?</p> <p>2 A. I wouldn't say I pay special attention. I</p> <p>3 was -- I read it as I would read, you know, any privacy</p> <p>4 policy.</p> <p>5 Q. When you read privacy policies, do you generally 10:45:10</p> <p>6 read the whole thing?</p> <p>7 A. Generally, no. Generally, I'll peruse them. So</p> <p>8 certain things will catch your eye.</p> <p>9 Q. And what sorts of information are you generally</p> <p>10 looking for as you peruse the privacy policy? 10:45:30</p> <p>11 A. Just anything that -- that stands out, like I</p> <p>12 don't look for anything in particular, but you -- you</p> <p>13 know, I'm not like this privacy policy -- like very anal</p> <p>14 about I look at every privacy policy and I read it down</p> <p>15 to every word and like analyze it and -- because there's 10:45:56</p> <p>16 a lot of like legal mumbo-jumbo in there, too.</p> <p>17 So it's a matter of -- you know, I look at it</p> <p>18 generally for what it is, and if anything stands out that</p> <p>19 seems odd to me, then maybe I'll read further or look</p> <p>20 into it further. 10:46:14</p> <p>21 Q. Have you ever decided to stop visiting a website</p> <p>22 after reading its privacy policy?</p> <p>23 A. Sure, yeah.</p> <p>24 Q. And which -- can you name one of those websites?</p> <p>25 A. No. I don't recall a specific website. Just 10:46:30</p> <p style="text-align: right;">Page 37</p>

<p>1 already said that you've not downloaded the browser 2 add-on, but is it fair to say that if you'd read this 3 page, you would have learned how to prevent your data 4 from being used by Google Analytics?</p> <p>5 MR. LEE: Objection. Lacks foundation, calls 11:19:49 6 for speculation, improper hypothetical.</p> <p>7 You can try to answer.</p> <p>8 THE WITNESS: If I -- I'm sorry, can you repeat 9 your question, Sara?</p> <p>10 Q. BY MS. JENKINS: Yeah. I'm -- I'm just 11:20:00 11 wondering, after reading this, do you -- do you now 12 understand that there is -- that you could download this, 13 which would then prevent your data from being used by 14 Google Analytics?</p> <p>15 A. I understand it as one of the options, Google 11:20:18 16 offers to do that, it seems.</p> <p>17 Q. After going through the Redfin privacy policy -- 18 privacy notice, as we have to today, and these links, 19 would you still use the Redfin website?</p> <p>20 A. Yeah, I would still use the Redfin website 11:20:45 21 depending on the context of why I'm using that website 22 and when, how, what. Again, context matters. And so 23 there's times where I understand that a -- like my 24 information is being shared. I understand that data is 25 going to be collected, my personal information is going 11:21:06 Page 58</p>	<p>1 MR. LEE: Did we lose, Sara?</p> <p>2 MS. JENKINS: No, sorry. I'm just looking back 3 at a question.</p> <p>4 MR. LEE: Okay.</p> <p>5 Q. BY MS. JENKINS: All right. What -- what 11:23:08 6 information would you consider to be sensitive user data?</p> <p>7 MR. LEE: Objection to form.</p> <p>8 THE WITNESS: Anything where I click on the 9 Incognito mode now becomes sensitive user data. Because 10 I'm saying this is off limits. So any data from that 11:23:26 11 point forward is now sensitive user data. And it's 12 basically because I'm saying, look, I don't -- this -- 13 this part of it, I don't want you to hear, see. Like 14 this is my private information. So it's all sensitive.</p> <p>15 Q. BY MS. JENKINS: So, for example, if you were to 11:23:53 16 visit the Redfin website in regular mode, you would not 17 consider that to be sensitive, but if you are using 18 Incognito mode, that same visit you would consider to be 19 sensitive user data?</p> <p>20 A. Yes, I would. Because I'm there -- I'm saying 11:24:13 21 that -- if I just said something normally to somebody, 22 then that's one thing. But if I, you know what, say, 23 hey, this is a -- this is a secret, then I'm putting up a 24 sign saying, hey, this is private, this is sensitive.</p> <p>25 So it -- it doesn't really matter actually the 11:24:33 Page 60</p>
<p>1 to be collected. There's times I understand that. And 2 then there's times that I want it more private.</p> <p>3 And so, again, context matters. Would I visit 4 the website? Yes, in certain situations and under 5 certain circumstances. 11:21:23 6 If the darned Google Incognito button really did 7 what it's supposed to do and what it says it's supposed 8 to do, then I can go on there worry free.</p> <p>9 Q. What would you consider to be personal user 10 data? 11:21:43 11 A. Personal user data. Well, that is in all the -- 12 you know, the information about myself, my use, my 13 location, my habits, my preferences. What I do before I 14 go to a website, what I do after I go to a website. What 15 color hair I prefer on a woman. Like all of that seems 11:22:08 16 to be personal data.</p> <p>17 Q. Would it be fair to say that to be personal user 18 data, it would need to be data that is linked to you?</p> <p>19 MR. LEE: Objection to form, asked and answered. 20 You can answer. 11:22:32 21 THE WITNESS: I believe it's all linked to me.</p> <p>22 Q. BY MS. JENKINS: But if -- if a piece of data 23 were not linked -- 24 A. I guess I would need to understand how you 25 disassociate everything about me from me. 11:22:45 Page 59</p>	<p>1 website that I'm going to; it matters the context. Am I 2 deciding is this going to be private or not? And because 3 I understand that, hey, if I go do normal browsing, I'm 4 doing normal browsing and I'm giving up data and -- an my 5 data's being collected, and that's the deal we have. 11:24:53 6 But when I go into Incognito mode, hey, the deal 7 we have is, no, Google's not to be collecting my data. 8 So that's how it matters.</p> <p>9 Q. Have you -- okay. Sorry to interrupt you. 10 Have you used other browsers' private browsing 11:25:12 11 modes?</p> <p>12 A. I think I've tried one -- one or maybe two at 13 some point. But -- oh, sorry. Sorry to interrupt.</p> <p>14 Q. No, you go ahead and finish your answer.</p> <p>15 A. But it -- yeah, I -- I tried one or two at some 11:25:34 16 point. Because I did find it interesting that, oh, they 17 have a private browsing mode as well.</p> <p>18 Q. And you've tried Microsoft's private browsing 19 mode; is that correct?</p> <p>20 A. I don't recall Microsoft's. 11:26:03 21 Q. Which private browsing modes do you recall 22 using?</p> <p>23 A. I believe it was on Safari one time, and then 24 I'd have to recall what the other browsers that are out 25 there. Because I -- like 99.9 percent of what I do is 11:26:29 Page 61</p>

<p>1 on -- on Google Chrome. So I don't really use the other 2 browsers very often.</p> <p>3 I do -- the reason why I'm saying yes is I do 4 remember being prompted on some other browser that, hey, 5 there's a -- there's a -- I don't think they called it 11:26:48 6 Incognito mode. I don't even recall what they called it. 7 But it was a -- saying, hey, there's a private browsing 8 mode here.</p> <p>9 And so I do recall clicking on one of them. I 10 think it was Safari. 11:27:02</p> <p>11 Q. Do you believe that Google will be receiving 12 data from the Redfin website if you browse using Safari's 13 private browsing mode?</p> <p>14 A. Do I think that Google will be... 15 Yeah, I guess that's possible. 11:27:29</p> <p>16 Q. And does that cause you concern? 17 A. No, because I -- like even when I clicked on it, 18 I didn't even -- I don't even think I went to a website. 19 I just clicked on it to open it because it was -- it was 20 prompted to me. So I don't have any concerns because, 11:27:49 21 again, 99.9 percent of what I do is on Google, and Google 22 has Incognito mode.</p> <p>23 Q. Do you consider sensitive user data and personal 24 information to be the same thing? 25 A. Yeah, I think they're -- they're synonymous. It 11:28:20</p> <p style="text-align: right;">Page 62</p>	<p>1 mischaracterizes his prior testimony. 2 THE WITNESS: No. I guess -- well, I didn't 3 have the concern because I don't use them. So I haven't 4 given it any thought because I don't -- I don't use them. 5 Like when I went on it, I -- I don't even believe I went 11:47:01 6 on a website. So there's not much cause for concern 7 there.</p> <p>8 Q. BY MS. JENKINS: All right. If you are in 9 Incognito mode and you visit Google.com, do you 10 understand that Google will receive certain of your data? 11:47:18</p> <p>11 A. From in Incognito mode and I go to Google.com? 12 No, I think that's why I go into Incognito mode. So they 13 don't collect my data.</p> <p>14 Q. So if you were to go into Google.com and, for 15 instance, search for something, you don't think that 11:47:46 16 Google should receive any information about what you're 17 searching for?</p> <p>18 A. Well, yeah, if I go into Incognito mode, I 19 don't -- I don't think they should collect anything on 20 me. If I type in something that I'm seeking, then like a 11:48:02 21 water bottle, I would expect water bottles to come up.</p> <p>22 Q. So you would expect information about your 23 request to be sent to Google; is that correct? 24 A. I would expect it to come up. I wouldn't expect 25 to be collected. Because Google said they wouldn't do 11:48:23</p> <p style="text-align: right;">Page 64</p>
<p>1 depends on, you know, like everybody's definition and 2 context. But, yeah, yes. In general, yes.</p> <p>3 MS. JENKINS: All right. Can we take like a 4 five-minute break?</p> <p>5 MR. LEE: Sure. Let's take ten. 11:28:41</p> <p>6 MS. JENKINS: Okay. Sounds good.</p> <p>7 THE VIDEOGRAPHER: We are off the record. The 8 time is 11:29 a.m. 9 (Recess.)</p> <p>10 THE VIDEOGRAPHER: We are back on the record. 11:45:38 11 The time is 11:46 a.m.</p> <p>12 Q. BY MS. JENKINS: Mr. Brown, before the -- the 13 break, I asked you a few questions about private browsing 14 mode other than Incognito mode for Chrome, and I was 15 wondering, you'd mentioned that you had tried them but 11:46:06 16 only rarely. I was wondering, you mentioned that you 17 didn't have the same concern if Google received 18 information when you were private browsing using a 19 browser other than Chrome.</p> <p>20 And so I was wondering if you mean that it's 11:46:23 21 okay for Google to receive your browsing information when 22 you browse in another browser's private browsing mode, 23 but not if you're browsing in Incognito mode because 24 Incognito mode is a Google product.</p> <p>25 MR. LEE: Objection to form. That 11:46:41</p> <p style="text-align: right;">Page 63</p>	<p>1 that. That's why I went into Incognito mode. 2 Q. So what is the difference between having results 3 for your search come up and having Google collect the 4 information that you've input?</p> <p>5 A. Well, if I go -- if I like -- as an example, if 11:48:41 6 I go onto -- if I'm in Incognito mode and I go into a 7 website, I would expect that website to come up, but I 8 wouldn't expect things to be collected on the -- while 9 that's happening.</p> <p>10 And so I guess in your example, I guess it would 11:49:01 11 be the same thing.</p> <p>12 Q. But you understand that Google will have to 13 receive some information from you in order to provide you 14 search results if you're searching for something; is that 15 right? 11:49:22</p> <p>16 A. I -- I understand that if I go onto Google, and 17 I go into the Google search bar, and I'm in Incognito 18 mode, that some magic in the background happens, and then 19 that comes up. I don't -- I don't really know how that 20 works, but I do understand that if I search in the Google 11:49:40 21 search bar and I'm in Incognito mode, I do understand 22 that what I search for would come up.</p> <p>23 Q. So doesn't that mean that Google will have to 24 receive the information that you input? 25 MR. LEE: Objection. Asked and answered, calls 11:49:57</p> <p style="text-align: right;">Page 65</p>

<p>1 Q. Okay. But you don't -- you don't know if you</p> <p>2 specifically enabled the instruction which is clear</p> <p>3 cookies and site data when you close all windows within</p> <p>4 your Chrome setting?</p> <p>5 A. I don't believe I've -- I've done that in 12:20:53</p> <p>6 regular Chrome settings, no. And I wouldn't really have</p> <p>7 a reason to do that because, again, I don't hate the idea</p> <p>8 of data collection in normal Chrome browsing. I hate the</p> <p>9 idea of being told that my data isn't being collected and</p> <p>10 then it being collected in Incognito browsing. 12:21:12</p> <p>11 Q. Did you know that you can disable JavaScript in</p> <p>12 Chrome settings?</p> <p>13 A. I don't -- I don't know if I'm aware of that,</p> <p>14 no.</p> <p>15 Q. Are you aware of ad blocking Chrome extensions? 12:21:28</p> <p>16 A. No, not particularly.</p> <p>17 Q. Have you heard of a Chrome extension called</p> <p>18 AdBlock?</p> <p>19 A. This may be a dumb question, but was that the</p> <p>20 one that you showed me earlier today? 12:21:54</p> <p>21 Q. I -- I do not believe that that has been in any</p> <p>22 of the documents we've looked at today.</p> <p>23 A. Okay. Because I thought you'd showed me</p> <p>24 something that did that or something like that. Maybe</p> <p>25 I'm getting confused. But so then apparently, no. 12:22:11</p> <p style="text-align: right;">Page 82</p>	<p>1 our work email. It seemed like another layer of</p> <p>2 protection there, something like that.</p> <p>3 Q. Have you ever used a VPN specifically to try to</p> <p>4 protect your privacy while browsing on the web?</p> <p>5 MR. LEE: I'm sorry, could you repeat that 12:24:07</p> <p>6 question, Sara?</p> <p>7 Q. BY MS. JENKINS: I said have you -- have you</p> <p>8 ever used a VPN specifically to try to protect your</p> <p>9 privacy while browsing on the web?</p> <p>10 A. No, not specifically for that. 12:24:20</p> <p>11 Q. Have you used any standalone ad-blocker</p> <p>12 programs, so as opposed to an extension for Chrome, just</p> <p>13 in any -- any type of ad blocker?</p> <p>14 A. No, not -- I don't believe so.</p> <p>15 Q. Is it your view that Google does not alert you 12:24:46</p> <p>16 that your data may be received by Google when you browse</p> <p>17 the internet in a private browsing mode?</p> <p>18 A. Can you repeat that question?</p> <p>19 Q. Is it your view that Google does not alert you</p> <p>20 that your data may be received by Google when you browse 12:25:01</p> <p>21 the internet in private browsing mode?</p> <p>22 A. That they -- they don't alert me when they --</p> <p>23 when I'm in Incognito mode. That -- so it's my</p> <p>24 understanding that Google does not alert me that they're</p> <p>25 collecting my data when they're in Incognito mode. It's 12:25:25</p> <p style="text-align: right;">Page 84</p>
<p>1 Q. So other than today, it's correct to say you're</p> <p>2 not familiar with AdBlock or --</p> <p>3 A. Yeah. No, I think that's fair to say. And all</p> <p>4 of these that you're mentioning, they seem to be, you</p> <p>5 know, the over-arching theme is, you know, other options 12:22:30</p> <p>6 of ways that I can, you know, block things and do that.</p> <p>7 But I don't -- again, when I'm in normal Google browsing</p> <p>8 mode or Chrome browsing mode, I'm -- I'm okay with that</p> <p>9 stuff, generally. It's when I go into Incognito mode.</p> <p>10 And I wouldn't need to search for all that 12:22:52</p> <p>11 stuff. Like, look, ten things you just named, and I've</p> <p>12 got to like figure out the labyrinth of that? No, I have</p> <p>13 Incognito mode, and I can just go into Incognito mode and</p> <p>14 my data won't be collected. That's what Google told me.</p> <p>15 Q. Do you have an understanding of VPN, like 12:23:08</p> <p>16 virtual private network?</p> <p>17 A. I -- I have a limited understanding.</p> <p>18 Q. Have you ever used a VPN?</p> <p>19 A. I think, yes, it would have been -- oh, yes, I</p> <p>20 did for sure. When I -- early on, just to be accurate, 12:23:27</p> <p>21 so I was with T-Mobile for 13-and-a-half years, but for</p> <p>22 half of that time, I was with MetroPCS before they were</p> <p>23 acquired by T-Mobile, so...</p> <p>24 But in the Metro days, we did use a VPN to</p> <p>25 access our -- you know, our server to be able to get onto 12:23:52</p> <p style="text-align: right;">Page 83</p>	<p>1 actually quite the opposite. They -- from top to bottom,</p> <p>2 from the privacy policy to the splash screen, they're</p> <p>3 indicating that they're not doing that.</p> <p>4 Q. How would you expect Google to alert you to the</p> <p>5 fact that it is receiving information from you when 12:25:49</p> <p>6 you're browsing in Incognito mode?</p> <p>7 A. I would expect them -- well, okay, let me back</p> <p>8 up. Let me back up here. Because that's -- it's a</p> <p>9 slippery slope I can go down there.</p> <p>10 I expect them to not collect my data in those 12:26:15</p> <p>11 modes. And you're asking me, okay, well, hey, if they</p> <p>12 were going to, how -- how would they do it? They don't</p> <p>13 need to. I would just do -- use normal Google Chrome</p> <p>14 if -- or if they were going to do it, I would be -- it</p> <p>15 should be completely transparent and explained, hey, I 12:26:32</p> <p>16 know you just went into Incognito mode, but we're going</p> <p>17 to be tracking you -- like, now. We're going to be</p> <p>18 collecting, like, your data, which kind of defeats the</p> <p>19 purpose of Incognito mode.</p> <p>20 So like how would I expect them to do that? I 12:26:52</p> <p>21 expect them not to do that. I expect them to not say</p> <p>22 we're not going to do it and then -- and then do it.</p> <p>23 It's like -- yeah, I don't expect my girlfriend to cheat</p> <p>24 on me. How do I want her to tell me when she does cheat</p> <p>25 on me? I'm more concerned that she cheated on me, 12:27:13</p> <p style="text-align: right;">Page 85</p>

<p>1 A. Yes, or when it was first introduced to me. I'm 2 assuming that's when it first came out because I was 3 unaware of it before that. So when it was first 4 introduced to me through the -- how it popped up or 5 something, it seemed like a new feature. So that's when 12:34:50 6 I started using it.</p> <p>7 That might not have answered your question. I'm 8 sorry.</p> <p>9 Q. That's all right.</p> <p>10 How often do you use Incognito mode? 12:35:01</p> <p>11 A. It -- it -- it ranges, but maybe a couple times 12 a week.</p> <p>13 Q. And do you ever keep Incognito sessions open for 14 longer than just while you're browsing?</p> <p>15 A. Sometimes. 12:35:28</p> <p>16 Q. Have you left Incognito sessions open for days 17 at a time?</p> <p>18 A. I have.</p> <p>19 Q. How about for more than a week or two weeks at a 20 time? 12:35:46</p> <p>21 A. I would say that's rare, but I believe it's 22 happened.</p> <p>23 Q. As we sit here today, can you tell me your 24 understanding of the difference between Chrome basic mode 25 and Chrome Incognito mode? 12:36:04 Page 90</p>	<p>1 technicalities of that, but I -- I could -- I think 2 that's reasonable to think.</p> <p>3 Q. And you can -- sorry. My -- pardon me. My 4 light is on a motion detector. It thinks I'm not here.</p> <p>5 Even since this case started, is it -- it's true 12:38:33 6 that you've continued to use Chrome as your main browser; 7 is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And have you continued to use Incognito mode 10 since the case started? 12:38:44</p> <p>11 A. I have.</p> <p>12 Q. So you've continued to use Incognito mode 13 despite the fact that you now have the understanding that 14 Google is receiving personal information when you're 15 using Incognito mode. 12:39:05</p> <p>16 Is that true?</p> <p>17 MR. LEE: Objection to form.</p> <p>18 THE WITNESS: Yes, that is true. And obviously, 19 a lot more has come to light about what it is. And so 20 I'm very skeptical of it now. But I think it was prudent 12:39:20 21 to not change my behavior and habits so we can get, you 22 know, a good idea of what's going on.</p> <p>23 Q. BY MS. JENKINS: Can you explain further why -- 24 why wouldn't you want to change your behavior or habits?</p> <p>25 A. Because I just got involved in a lawsuit with 12:39:45 Page 92</p>
<p>1 MR. LEE: Objection. Lack of foundation.</p> <p>2 THE WITNESS: Yeah. Chrome is normal browsing 3 with traditional data collection. Incognito mode is a 4 private browsing mode that doesn't -- where Google does 5 not collect your data. 12:36:23</p> <p>6 Q. BY MS. JENKINS: Apart from the Chrome mode of 7 Incognito, do you know what the term "incognito" means?</p> <p>8 A. Yeah, hidden. Like it's probably synonymous 9 with invisible.</p> <p>10 Q. You think that "incognito" and "invisible" are 12:36:58 11 the same?</p> <p>12 A. Yeah. Well, yes, I think "incognito" means it's 13 probably closer to hidden, but both. It's like if I were 14 to define it, that would probably -- say something like 15 that. Yes, I assume it to be not seen, hidden, you know, 12:37:20 16 like something like that.</p> <p>17 Q. Prior to taking part in this case, did you think 18 that Incognito mode would completely conceal your 19 internet activity from everyone?</p> <p>20 A. From Google. 12:37:44</p> <p>21 Q. Does that mean there are other parties that you 22 didn't have that expectation for?</p> <p>23 A. Yes, because I don't believe that Google 24 can control like everything outside of Google. I 25 don't -- yeah, I -- I don't really know the 12:38:10 Page 91</p>	<p>1 Google. Yes, I wouldn't want to change my habits when it 2 pertains to my habits.</p> <p>3 MS. JENKINS: All right. I'm moving onto a 4 different topic now. So if people would like to break 5 for lunch, I'm happy to do it, or we can continue on for 12:40:13 6 a bit, if you want.</p> <p>7 MR. LEE: Obviously, I'll defer to Chasom, but 8 it might help in our decision making if we get a sense of 9 how close we are to the finish line.</p> <p>10 If it's going to be a lot more, then I think we 12:40:25 11 should just take lunch. If you think you can power 12 through, then we'll talk about it.</p> <p>13 MS. JENKINS: I don't -- I do not think we'll 14 power through without taking a lunch. So maybe we take 15 lunch now and -- do you want to take 30 minutes? Does 12:40:38 16 that work for you?</p> <p>17 MR. LEE: Let's take 40 and get back on the 18 record in 40.</p> <p>19 MS. JENKINS: All right.</p> <p>20 THE REPORTER: Off the record. 12:40:55</p> <p>21 THE VIDEOGRAPHER: We are -- we are off the 22 record. The time is 12:41 p.m.</p> <p>23 (Recess.)</p> <p>24 THE VIDEOGRAPHER: We are back on the record. 25 The time is 1:29 p.m. 13:29:03 Page 93</p>

<p>1 I'm -- if I'm paying for data, then I will run out and 2 have to pay for more. If I am on an unlimited plan, 3 which I am, it actually will throttle my plan. So now 4 my -- my data plan on my phone will run out of data 5 sooner. And so then now all my data is going to take 15:22:59 6 longer. And so now everything I'm trying to do on my 7 phone takes longer, and my time is very valuable. 8 So when like just in -- in browsing alone, you 9 could start adding up that time and -- and that's even 10 more. So those are just some -- off the top of my head, 15:23:16 11 some ways that I was damaged. 12 Q. I want to make sure I understand what you're 13 saying. 14 Are you saying that your phone uses more energy 15 to -- when it uses Incognito mode rather than basic mode? 15:23:34 16 A. Yes, that's my understanding. And just by 17 sending out data when it's not supposed to. So that does 18 take, you know, energy as well. 19 Q. How did you come to that understanding? 20 A. Well, I've been in the cell phone industry for 15:23:52 21 20 years. 22 Q. Have you done any personal experiments to see 23 whether that is the case? 24 A. No. I'll leave that up to the experts. I 25 haven't done any personal experiments. 15:24:09 Page 154</p>	<p>1 Q. Is there any other -- other than the additional 2 energy that you mentioned and potentially an effect on 3 your cell phone plan, is there any other harm that you 4 have suffered as a result of Google's conduct? 5 A. Yes. When you have your -- your privacy 15:26:22 6 breached, I consider that harm. And/or when you sign, 7 you know, a contract and the other party doesn't live up 8 to their side of the contract, I consider that harm. 9 Q. What type of harm is that? 10 MR. LEE: Objection to the extent it calls for a 15:26:50 11 legal conclusion. 12 THE WITNESS: Well, I believe in the -- in the 13 Amended Complaint, I think one of the complaints is a 14 breach of contract. So that's where we point out the 15 harm. 15:27:14 16 Q. BY MS. JENKINS: All right. Is there any -- any 17 harm in addition to the ones that you've just named? 18 A. Well, that's the biggest thing. I think 19 probably a lot of what I named isn't the biggest thing. 20 It's all of my data that has been collected that is being 15:27:31 21 used to -- without my knowledge, without my consent, with 22 not even knowing what it is and what's being done with 23 it, how it's being monetized, like that -- there's a 24 whole, you know, unknown harm out there as well. 25 Q. Have you lost any property as a result of 15:27:59 Page 156</p>
<p>1 Q. Do you have any evidence to support that belief? 2 MR. LEE: You know what? I'm going to direct 3 you not to answer that question as it may reveal 4 attorney-client communications. 5 THE WITNESS: I won't be answering the question. 15:24:28 6 MS. JENKINS: That's fine. I'm -- I'm -- I'm 7 just -- I'm -- all right, James, is it your 8 representation that there's no information that he could 9 give on that question that would not be privileged? 10 MR. LEE: I think he's given you a ton of 15:24:43 11 information already. So to the extent you're asking for 12 more, I think that's where you're now getting into 13 privilege territory. 14 Q. BY MS. JENKINS: Do you have any evidence, not 15 related to your involvement in this litigation, that 15:24:58 16 using Incognito mode takes more energy on your phone 17 rather than basic mode? 18 A. Well, sending out more data just in general 19 takes more energy from a phone, as -- as much as I 20 understand phones and data. 15:25:25 21 Q. Have you seen any effect on the amount of data 22 that you're using on your cell phone plan that you can 23 directly relate to your use of Incognito mode? 24 A. Nothing that I could point to right now. I 25 haven't done the -- the calculation. 15:25:48 Page 155</p>	<p>1 Google's conduct? 2 A. I don't believe I lost any property. 3 Q. Have you ever purchased any products as a result 4 of digital advertisements that you believe were targeted 5 by Google? 15:28:24 6 A. I -- yeah, I've purchased products online 7 through targeted advertising. It was most likely Google. 8 I didn't really take the time to figure out where it was, 9 but yes, very much most likely by Google. And I could 10 probably, you know, look at the search or something like 15:28:45 11 that to figure out that. 12 But, yeah, the short version of that long-winded 13 horrible answer is yes, I've -- I've purchased product 14 from targeted advertising. 15 Q. Are you aware that many free services and 15:29:00 16 content on the internet are paid for by advertising? 17 A. Yeah, I'm aware. I'm aware. 18 Q. And you understand that includes targeted 19 advertising? 20 A. Yeah. 15:29:18 21 Q. And do you generally understand that users' data 22 is being used for targeted advertising? 23 A. Yeah. 24 Q. And you've seen tailored ads when you've been 25 using Chrome; correct? 15:29:39 Page 157</p>

<p>1 A. Yeah.</p> <p>2 Q. What is your opinion about targeted advertising?</p> <p>3 MR. LEE: In normal mode?</p> <p>4 MS. JENKINS: We can say in normal mode. I was</p> <p>5 looking for a general opinion about targeted advertising. 15:29:54</p> <p>6 THE WITNESS: I'll do you one better. I'll do</p> <p>7 all three: General, normal mode, and Incognito.</p> <p>8 Well, yeah, just in general, I think targeted</p> <p>9 advertising is a good thing. And normal browsing mode, I</p> <p>10 think that, again, it's I've given consent. We have a 15:30:18</p> <p>11 deal. I get the deal. Thank you for showing me, you</p> <p>12 know, a -- the surfboard I like.</p> <p>13 And then when I'm in -- when I'm not in</p> <p>14 Incognito mode -- or I'm sorry, when I am in Incognito</p> <p>15 mode, I don't think that that's appropriate because you 15:30:37</p> <p>16 shouldn't be collecting anything about me. I'm supposed</p> <p>17 to be hidden. I'm supposed to be incognito. I'm</p> <p>18 supposed to be an invisible spy guy. That's why I click</p> <p>19 on the button.</p> <p>20 And so I think anything along those lines is 15:30:57</p> <p>21 inappropriate at minimum and, you know, a breach in our</p> <p>22 deal otherwise.</p> <p>23 Q. BY MS. JENKINS: Sometimes Chrome will suggest</p> <p>24 searches for you when you start typing into the search</p> <p>25 bar. Are you familiar with that? 15:31:16</p> <p style="text-align: right;">Page 158</p>	<p>1 different Gmail accounts. Do you currently use all three</p> <p>2 of them?</p> <p>3 A. Yeah, some more than others, but yeah.</p> <p>4 Q. Would you say that the one that you use the</p> <p>5 most, would you say you use it daily? 15:33:11</p> <p>6 A. Yeah, pretty much.</p> <p>7 Q. And is that a valuable service that Google</p> <p>8 provides to you?</p> <p>9 MR. LEE: Objection.</p> <p>10 THE WITNESS: Oh, email? 15:33:28</p> <p>11 Q. BY MS. JENKINS: Yes.</p> <p>12 A. You know, email is a fantastic service.</p> <p>13 THE REPORTER: I'm sorry. I didn't get that.</p> <p>14 Can you repeat, please?</p> <p>15 THE WITNESS: Email is a fantastic service. 15:33:42</p> <p>16 MR. LEE: I also objected to the form of the</p> <p>17 question.</p> <p>18 Q. BY MS. JENKINS: Do you use -- well, I know you</p> <p>19 already testified about something you did on YouTube, but</p> <p>20 do you currently use YouTube? 15:33:52</p> <p>21 A. Yes.</p> <p>22 Q. About how often do you use YouTube?</p> <p>23 A. I watch a lot of YouTube. So every day. In my</p> <p>24 defense, I have YouTube Red, and it actually make --</p> <p>25 allows me to watch videos without advertisement. So 15:34:14</p> <p style="text-align: right;">Page 160</p>
<p>1 A. I am.</p> <p>2 Q. Do you think that is a helpful feature?</p> <p>3 A. Yeah, it's helpful.</p> <p>4 Q. And have you taken steps to disable that</p> <p>5 feature, ever? 15:31:31</p> <p>6 MR. LEE: Go ahead and answer if you can.</p> <p>7 THE WITNESS: In -- no, I haven't taken any</p> <p>8 steps to disable that feature outside of if I go in</p> <p>9 Incognito mode, I wouldn't think they would be predicting</p> <p>10 what I'm about to text because they shouldn't know 15:31:51</p> <p>11 anything about me.</p> <p>12 Q. BY MS. JENKINS: Have you ever noticed that it</p> <p>13 was providing you with suggestions when you were</p> <p>14 searching in Incognito mode?</p> <p>15 A. I don't have a particular recollection of that. 15:32:08</p> <p>16 Q. Are you aware that the suggestions that it makes</p> <p>17 are sometimes -- I'm talking about in non -- in regular</p> <p>18 mode --</p> <p>19 A. Okay.</p> <p>20 Q. -- are based on previous searches that you've 15:32:31</p> <p>21 done?</p> <p>22 A. Yeah, that makes sense.</p> <p>23 Q. Do you currently use your Gmail accounts?</p> <p>24 A. I do currently use my Gmail accounts.</p> <p>25 Q. And I believe you disclosed to us three 15:32:51</p> <p style="text-align: right;">Page 159</p>	<p>1 that's why I like that service. But it makes me watch it</p> <p>2 more, I guess. So I use YouTube a lot, yes.</p> <p>3 Q. And do you understand that YouTube is owned by</p> <p>4 Google?</p> <p>5 A. Yes. 15:34:26</p> <p>6 Q. Do you use Google Hangouts?</p> <p>7 A. I have. Not normally. I've got to be honest.</p> <p>8 Hangouts is kind of an inferior product to its</p> <p>9 competitors. I generally like Google stuff, but that one</p> <p>10 they need to work on a little bit more. 15:34:45</p> <p>11 Q. What do you prefer?</p> <p>12 A. I don't -- most people invite me to their</p> <p>13 things. I don't really know like which one I would -- I</p> <p>14 would prefer or I would go to. But nobody ever invites</p> <p>15 me to Google Hangout. I know that. And I don't really 15:35:06</p> <p>16 use it, although I have used it before.</p> <p>17 Q. What about Google Calendar; do you use that?</p> <p>18 A. Yes, I use Google Calendar.</p> <p>19 Q. Do you use that as your main calendar?</p> <p>20 A. Yeah, I would say so. 15:35:19</p> <p>21 Q. And how about Google Play Music; do you use</p> <p>22 that?</p> <p>23 A. Rarely.</p> <p>24 Q. And all of these services, you agree that Google</p> <p>25 provides these services for free? 15:35:36</p> <p style="text-align: right;">Page 161</p>

<p>1 has; is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. And on what basis has your understanding of the</p> <p>4 way that Incognito works changed?</p> <p>5 MR. LEE: And now I'm going to ask you to not 17:19:44</p> <p>6 answer that question because it's based on</p> <p>7 attorney-client privilege.</p> <p>8 MS. JENKINS: James, you're the one who brought</p> <p>9 this up; right? You're the one who asked the question.</p> <p>10 MR. LEE: I asked has it changed. You're asking 17:19:58</p> <p>11 for the bases. Those are two different things.</p> <p>12 Q. BY MS. JENKINS: All right. Mr. Brown, will you</p> <p>13 adhere to your counsel's instruction?</p> <p>14 A. Yes.</p> <p>15 MS. JENKINS: All right. Then I have no further 17:20:10</p> <p>16 questions.</p> <p>17 MR. LEE: Thanks, everyone. We'll take the</p> <p>18 rough. We'll take the rough copy, please.</p> <p>19 THE REPORTER: Fine. Thank you. Can we go off</p> <p>20 the record? 17:20:25</p> <p>21 THE VIDEOGRAPHER: We are off the record. The</p> <p>22 time is 5:20 p.m. on January 13th, 2022.</p> <p>23 This concludes today's testimony given by</p> <p>24 Chasom Brown. The total number of media units used was</p> <p>25 eight and will be retained by Veritext Legal Solutions. 17:20:38</p> <p style="text-align: right;">Page 202</p>	<p>1 I declare under the penalty of perjury under the</p> <p>2 laws of the State of California that the foregoing is</p> <p>3 true and correct.</p> <p>4 Executed on _____, 2022, at</p> <p>5 _____.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 SIGNATURE OF THE WITNESS</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 204</p>
<p>1 (Time noted: 5:20 p.m. Pacific Standard Time.)</p> <p>2 --oOo--</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 203</p>	<p>1 STATE OF CALIFORNIA) ss:</p> <p>2 COUNTY OF MARIN)</p> <p>3</p> <p>4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do</p> <p>5 hereby certify:</p> <p>6 That the foregoing deposition testimony was</p> <p>7 taken before me at the time and place therein set forth</p> <p>8 and at which time the witness was administered the oath;</p> <p>9 That testimony of the witness and all objections</p> <p>10 made by counsel at the time of the examination were</p> <p>11 recorded stenographically by me, and were thereafter</p> <p>12 transcribed under my direction and supervision, and that</p> <p>13 the foregoing pages contain a full, true and accurate</p> <p>14 record of all proceedings and testimony to the best of my</p> <p>15 skill and ability.</p> <p>16 I further certify that I am neither counsel for</p> <p>17 any party to said action, nor am I related to any party</p> <p>18 to said action, nor am I in any way interested in the</p> <p>19 outcome thereof.</p> <p>20 IN WITNESS WHEREOF, I have subscribed my name</p> <p>21 this 17th day of January, 2022.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 205</p>

EXHIBIT 28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE
TRUJILLO, individually and on
behalf of all other similarly
situated,

Plaintiffs,

vs.

Case No.

GOOGLE LLC,

5:20-cv-03664-LHK-SVK

Defendant.

_____/

VIDEOTAPED DEPOSITION OF CHRISTOPHER CASTILLO

Remote Zoom Proceedings

Sacramento, California

Tuesday, February 8, 2022

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

JOB No. 5077508

Pages 1 - 266

Page 1

<p>1 UNITED STATES DISTRICT COURT</p> <p>2 NORTHERN DISTRICT OF CALIFORNIA</p> <p>3</p> <p>4 CHASOM BROWN, WILLIAM BYATT,</p> <p>5 JEREMY DAVIS, CHRISTOPHER</p> <p>6 CASTILLO, and MONIQUE</p> <p>7 TRUJILLO, individually and on</p> <p>8 behalf of all other similarly</p> <p>9 situated,</p> <p>10 Plaintiffs,</p> <p>11 vs. Case No.</p> <p>12 GOOGLE LLC, 5:20-cv-03664-LHK-SVK</p> <p>13 Defendant.</p> <p>14 _____/</p> <p>15</p> <p>16</p> <p>17 Videotaped deposition of CHRISTOPHER CASTILLO,</p> <p>18 taken on behalf of the Defendant, Remote Zoom Proceedings</p> <p>19 from Sacramento, California, beginning at 9:06 a.m.</p> <p>20 Pacific Standard Time and ending at 5:53 p.m. Pacific</p> <p>21 Standard Time, on Tuesday, February 8, 2022, before</p> <p>22 Leslie Rockwood Rosas, RPR, Certified Shorthand Reporter</p> <p>23 No. 3462.</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 2</p>	<p>1 APPEARANCES (Continued):</p> <p>2</p> <p>3 FOR THE DEFENDANT:</p> <p>4 QUINN EMANUEL URQUHART & SULLIVAN, LLP</p> <p>5 BY: STEPHEN A. BROOME, ESQ.</p> <p>6 865 South Figueroa Street, 10th Floor</p> <p>7 Los Angeles, California 90017</p> <p>8 (213) 443-3285</p> <p>9 stephenbroome@quinnemanuel.com</p> <p>10 -and-</p> <p>11 BY: TRACY XI GAO, ESQ.</p> <p>12 555 Twin Dolphin Drive, 5th Floor</p> <p>13 Redwood Shores, California 94065</p> <p>14 (650) 801-5000</p> <p>15 tracygao@quinnemanuel.com</p> <p>16 -and-</p> <p>17 BY: JOMAIRE A. CRAWFORD, ESQ.</p> <p>18 51 Madison Avenue, 22nd Floor</p> <p>19 New York, New York 10010</p> <p>20 (212) 849-7581</p> <p>21 jomairecrawford@quinnemanuel.com</p> <p>22</p> <p>23 Also Present:</p> <p>24 Scott Slater, Videographer</p> <p>25</p> <p style="text-align: right;">Page 4</p>
<p>1 APPEARANCES:</p> <p>2</p> <p>3 FOR THE PLAINTIFFS:</p> <p>4 MORGAN & MORGAN</p> <p>5 BY: RYAN MCGEE, ESQ.</p> <p>6 201 North Franklin Street, 7th Floor</p> <p>7 Tampa, Florida 33602</p> <p>8 (813) 223-5505</p> <p>9 rmcgee@forthepeople.com</p> <p>10 -and-</p> <p>11 BOIES SCHILLER FLEXNER LLP</p> <p>12 BY: JAMES LEE, ESQ.</p> <p>13 100 SE Second Street, Suite 2800</p> <p>14 Miami, Florida 33131</p> <p>15 (305) 539-8400</p> <p>16 jlee@bsflp.com</p> <p>17 -and-</p> <p>18 BY: HSIAO (MARK) C. MAO, ESQ.</p> <p>19 ERIKA NYBORG-BURCH, ESQ.</p> <p>20 44 Montgomery Street, 41st Floor</p> <p>21 San Francisco, California 91401</p> <p>22 (415) 293-6800</p> <p>23 mmao@bsflp.com</p> <p>24 enyborg-burch@bsflp.com</p> <p>25</p> <p style="text-align: right;">Page 3</p>	<p>1 I N D E X</p> <p>2</p> <p>3</p> <p>4 TUESDAY, FEBRUARY 8, 2022</p> <p>5</p> <p>6 WITNESS EXAMINATION</p> <p>7 CHRISTOPHER CASTILLO</p> <p>8</p> <p>9 BY MR. BROOME 10, 247</p> <p>10 BY MR. MCGEE 237</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:</p> <p>16 (NONE)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 5</p>

<p>1 this case?</p> <p>2 A. No.</p> <p>3 Q. Have you ever been involved in another class</p> <p>4 action?</p> <p>5 A. As an end user, yes. As a -- as a class member, 09:19:47</p> <p>6 yes.</p> <p>7 Q. And which class action was that?</p> <p>8 A. Multiple ones dealing with purchases I've made</p> <p>9 of products that were defective in some capacity. I've</p> <p>10 signed up and -- and received compensation for the fact 09:20:02</p> <p>11 that I purchased a product, like whether it be a shampoo</p> <p>12 or a, you know, a -- a pet food or what have you. I have</p> <p>13 signed up for class-action lawsuits in which I've</p> <p>14 purchased those products and received compensation for</p> <p>15 it. 09:20:25</p> <p>16 MR. MCGEE: Mr. Broome, can I ask: Are you</p> <p>17 asking whether he was a named plaintiff or a class</p> <p>18 representative as opposed to an absent class member or a</p> <p>19 settlement class member for the purposes of the question?</p> <p>20 MR. BROOME: Yeah. No, that's a fair question. 09:20:36</p> <p>21 My question was -- as phrased was a little -- a little</p> <p>22 broader, and I think he answered it appropriately.</p> <p>23 Q. So next question: Have you ever been involved</p> <p>24 in a class action as a named plaintiff or as a class</p> <p>25 representative? 09:20:49</p> <p style="text-align: right;">Page 18</p>	<p>1 while you browse the internet?</p> <p>2 MR. MCGEE: Object to the form.</p> <p>3 You can answer.</p> <p>4 THE WITNESS: Yeah, I do. Some. I mean, not --</p> <p>5 nothing outrageous. I mean, I will use Incognito mode on 09:22:21</p> <p>6 occasion.</p> <p>7 Q. BY MR. BROOME: Aside from using Incognito mode</p> <p>8 on occasion, what other precautions do you take to</p> <p>9 protect your privacy while you browse the internet?</p> <p>10 A. Sometimes I remove cookies, but other than that, 09:22:42</p> <p>11 not really much else.</p> <p>12 Q. When you remove cookies, do you do that during a</p> <p>13 private browsing session or do you do that during regular</p> <p>14 browsing sessions?</p> <p>15 A. I usually do it during regular browsing sessions 09:22:55</p> <p>16 because on occasion they interfere with performance on my</p> <p>17 computer.</p> <p>18 Q. In what way?</p> <p>19 A. They slow it down.</p> <p>20 Q. And what -- what's the basis for your belief 09:23:15</p> <p>21 that cookies slow down your computer?</p> <p>22 A. Articles I read on the -- on the computer.</p> <p>23 Q. And did you do research into this issue about</p> <p>24 cookies?</p> <p>25 A. No, I wouldn't classify it as research. I would 09:23:29</p> <p style="text-align: right;">Page 20</p>
<p>1 A. No. Not to my knowledge.</p> <p>2 Q. All right. So aside from being within the class</p> <p>3 and receiving some compensation as a -- as a class</p> <p>4 member, you've never been involved in a class action</p> <p>5 beyond that? 09:21:09</p> <p>6 A. That's correct.</p> <p>7 Q. And the class actions through which you received</p> <p>8 compensation were for defective products?</p> <p>9 A. That's correct.</p> <p>10 Q. Have you ever been involved -- involved -- I 09:21:20</p> <p>11 guess -- well, let me strike that.</p> <p>12 Have you ever participated in a class action in</p> <p>13 any way that involved privacy?</p> <p>14 A. No.</p> <p>15 Q. Is maintaining the privacy of your information 09:21:35</p> <p>16 while you browse the internet important to you?</p> <p>17 A. Yes.</p> <p>18 Q. And do you take precautions to protect your</p> <p>19 privacy while you browse the internet?</p> <p>20 MR. MCGEE: Object to the form. 09:21:56</p> <p>21 You can answer. You can answer, Mr. Castillo.</p> <p>22 THE WITNESS: Okay. So can you ask the question</p> <p>23 again?</p> <p>24 Q. BY MR. BROOME: Sure.</p> <p>25 Do you take precautions to protect your privacy 09:22:10</p> <p style="text-align: right;">Page 19</p>	<p>1 just classify it as casual reading on the internet.</p> <p>2 Q. Okay. All right.</p> <p>3 Aside from -- well, how often do you delete</p> <p>4 cookies?</p> <p>5 A. I don't recall. Maybe once or twice a year. 09:23:51</p> <p>6 Q. Have you ever enabled cookie blockers?</p> <p>7 A. I don't recall. I don't think so. Possibly,</p> <p>8 but I don't recall doing it. I use Norton Internet</p> <p>9 Security, and I think it -- it -- I think it -- I may</p> <p>10 have set the setting to block cookies on occasion, but 09:24:18</p> <p>11 then I end up turning it back on because I need some of</p> <p>12 the services that some of the websites have that, you</p> <p>13 know, if I want to purchase something, I have to accept</p> <p>14 their cookies.</p> <p>15 Q. Are you familiar with the cookie-blocker feature 09:24:31</p> <p>16 in Chrome?</p> <p>17 A. I know about it, but I haven't really researched</p> <p>18 it or -- or played with it. I mean, I don't think</p> <p>19 I've -- I think possibly in the past, I've engaged it and</p> <p>20 turned it on and off. 09:24:48</p> <p>21 Q. And you mentioned -- I think you mentioned</p> <p>22 Norton Internet Security. What's that?</p> <p>23 A. It is a -- it's a third-party service that keeps</p> <p>24 your computer safe.</p> <p>25 Q. Safe from what? 09:25:04</p> <p style="text-align: right;">Page 21</p>

<p>1 A. Malware, viruses, intrusions on your computer, 2 as far as best I know. I'm not a -- I'm not a computer 3 engineer.</p> <p>4 Q. And Norton Internet Services you said has a 5 cookie-blocking option? 09:25:27</p> <p>6 A. I believe it does. I -- I don't utilize it, to 7 the best of my knowledge, but I think it has that.</p> <p>8 Q. All right. And I think you said that you've -- 9 you've -- you may have set the setting to block cookies 10 on occasion, but then you end up turning it back after 09:25:54 11 some period of time; is that accurate?</p> <p>12 A. Yes.</p> <p>13 Q. Do you understand the functionality of cookies 14 at a high level?</p> <p>15 MR. MCGEE: Object to the form. 09:26:08</p> <p>16 You can answer.</p> <p>17 THE WITNESS: I don't understand the question. 18 Can you say that again?</p> <p>19 Q. BY MR. BROOME: Yeah.</p> <p>20 Do you understand the purpose of cookies, at 09:26:15 21 least at a high level?</p> <p>22 MR. MCGEE: Object to the form.</p> <p>23 You can answer.</p> <p>24 THE WITNESS: I don't know if I would say high 25 level. I think in general I understand cookies are like 09:26:24 Page 22</p>	<p>1 MR. MCGEE: Object to the form.</p> <p>2 You can answer.</p> <p>3 THE WITNESS: Yeah. I think -- yes. I think 4 cookies were used to help the functionality of the 5 website, which included ads. But, yeah, I don't know the 09:27:47 6 specifics of how ads appear on websites.</p> <p>7 Q. BY MR. BROOME: All right. Going back to the 8 precautions that you take to protect your privacy while 9 you browse the internet, you mentioned using Incognito on 10 occasion, you occasionally delete cookies, you have on 09:28:09 11 occasion enabled cookie blockers, and you use Norton 12 Internet Services or security.</p> <p>13 Anything else that you take -- any other 14 precautions that you take to protect your privacy online?</p> <p>15 MR. MCGEE: Object to the form insofar as it 09:28:31 16 misstates testimony.</p> <p>17 THE WITNESS: I would say no.</p> <p>18 Q. BY MR. BROOME: Well, do you read privacy 19 policies of companies that you encounter online?</p> <p>20 A. I'd like you to clarify that question. Are you 09:28:59 21 specifically talking about Google?</p> <p>22 Q. No, I'm not.</p> <p>23 A. Okay. So I would say occasionally I've looked 24 at the Privacy Policy on a specific website I've been on, 25 but that's not my normal practice. 09:29:16 Page 24</p>
<p>1 placeholders or something that somehow help with the 2 functionality of websites.</p> <p>3 Q. BY MR. BROOME: Are you aware that cookies are 4 used for tracking purposes?</p> <p>5 MR. MCGEE: Object to the form. 09:26:37</p> <p>6 You can answer.</p> <p>7 THE WITNESS: I believe that's one of the things 8 they do as well.</p> <p>9 Q. BY MR. BROOME: And were you aware that cookies 10 were used for tracking purposes before you participated 09:26:46 11 in this case?</p> <p>12 MR. MCGEE: Object to the form.</p> <p>13 You can answer.</p> <p>14 THE WITNESS: I -- can you ask the question 15 again? 09:26:59</p> <p>16 Q. BY MR. BROOME: Sure.</p> <p>17 Before becoming involved in this case, or let's 18 take it even back before, let's say the class period 19 here, 2016 to 2020, were you generally aware that cookies 20 are used for tracking purposes? 09:27:16</p> <p>21 MR. MCGEE: Object to the --</p> <p>22 THE WITNESS: Yes. Yeah, I think I was.</p> <p>23 Q. BY MR. BROOME: And were you -- during that same 24 period of time, were you generally aware that companies 25 that -- used cookies to show personalized ads? 09:27:31 Page 23</p>	<p>1 Q. How frequently or how many times would you say 2 that you've read the Privacy Policy on a website?</p> <p>3 A. I can't even recall. Maybe once or twice, two 4 or three times in the course of my use of the internet.</p> <p>5 Q. But you read Google's Privacy Policy; right? 09:30:01</p> <p>6 A. I'm familiar with it. I've read it.</p> <p>7 Q. Okay. Did you read it during the class period? 8 And when I say "class period," I mean 2016 to the date 9 the Complaint was filed.</p> <p>10 A. Yes. Yes, I've read it. 09:30:16</p> <p>11 Q. Did you read it when you signed up for your 12 Google Account?</p> <p>13 A. I'm familiar with it. Yeah, I looked at it.</p> <p>14 Q. Yeah, that's not quite the question I'm asking. 15 Let me break it down into bite-sized pieces. 09:30:30</p> <p>16 You signed up for a Google Account in or around 17 2012; right?</p> <p>18 A. (Nods head.)</p> <p>19 Q. "Yes"? You have to answer --</p> <p>20 A. Yes. Yes. 09:30:45</p> <p>21 Q. I'm sorry. Just because the court reporter's 22 typing everything down, you need to. She can't get the 23 head nods.</p> <p>24 Okay. And when you signed up for your Google 25 Account in or around 2012, did you at that time read 09:30:54 Page 25</p>

<p>1 Google's Privacy Policy?</p> <p>2 MR. MCGEE: Object to the form.</p> <p>3 You can answer.</p> <p>4 THE WITNESS: Yes. And I -- I read it, and I</p> <p>5 had to -- I think at the time -- I don't recall exactly 09:31:07</p> <p>6 because it was so long ago, but I think I had to scroll</p> <p>7 to the bottom and accept it.</p> <p>8 Q. BY MR. BROOME: Are you referring to the Terms</p> <p>9 of Service or are you referring to the Google Privacy</p> <p>10 Policy? 09:31:23</p> <p>11 A. Well, when I refer to the Terms of Service, the</p> <p>12 Privacy Policy is part of the Terms of Service, and it is</p> <p>13 embedded in the Terms of Service. At least on the last</p> <p>14 one I reviewed, it's on page 2. And it is an</p> <p>15 over-arching policy that is contained in the Terms of 09:31:38</p> <p>16 Service. So yes.</p> <p>17 Q. Well, let's be clear about what we mean here.</p> <p>18 When you say it's embedded, you mean there's a</p> <p>19 link to the Privacy Policy; right?</p> <p>20 A. No. I mean that the Privacy Policy is a 09:31:54</p> <p>21 document that says in it that it encompasses all</p> <p>22 activities of Google. So I am inferring from that and</p> <p>23 reading the Terms of Service that it is part of the Terms</p> <p>24 of Service. Or else it wouldn't be included in the Terms</p> <p>25 of Service. 09:32:13</p> <p style="text-align: right;">Page 26</p>	<p>1 Policy, and one is the splash screen, a copy of the</p> <p>2 splash screen for the Incognito mode.</p> <p>3 Oh, and I have a fourth document. It is the</p> <p>4 Second Amendment -- Amended Complaint (indicating).</p> <p>5 Q. All right. Do you have any notations or 09:33:26</p> <p>6 highlighting or anything like that on those documents?</p> <p>7 A. No. I specifically underlined the Privacy</p> <p>8 Policy. I underlined some things on the Privacy Policy.</p> <p>9 Q. Yeah. Okay. So we're going to -- we're</p> <p>10 definitely going to take a look at those documents. 09:33:39</p> <p>11 Which - which version do you have in front of</p> <p>12 you?</p> <p>13 A. Of -- are you talking about the Terms of</p> <p>14 Service? Because that's what we were referring to. The</p> <p>15 version I have of the Terms of Service -- let's see. 09:33:52</p> <p>16 Looking to see if you have a version number.</p> <p>17 It says "Terms of Service." It doesn't have a</p> <p>18 version number on it. It just says: "Google Terms of</p> <p>19 Service via personal use." No version number.</p> <p>20 Q. All right. Let me help you out a little bit. 09:34:20</p> <p>21 It should say "last modified" at the very top or</p> <p>22 something to that effect.</p> <p>23 A. No, it doesn't say that.</p> <p>24 Q. No date?</p> <p>25 A. No date. 09:34:31</p> <p style="text-align: right;">Page 28</p>
<p>1 Q. Right. But you're not -- when you say that</p> <p>2 you -- that when you signed up for your account, you read</p> <p>3 the Google Privacy Policy, you said, "I had to scroll to</p> <p>4 the bottom and accept it."</p> <p>5 A. Right. That was the Terms of Service. 09:32:24</p> <p>6 Q. Okay. And those Terms of Service, did they</p> <p>7 actually copy in -- well, withdrawn.</p> <p>8 You understand that the Terms of Service and the</p> <p>9 Google Privacy Policy are two separate documents.</p> <p>10 MR. MCGEE: Object to the form -- 09:32:41</p> <p>11 THE WITNESS: Yeah, I don't -- I don't agree</p> <p>12 with that. I think that the Terms of Service on page 2</p> <p>13 states that -- it says on page 2 Privacy Policy. So it's</p> <p>14 part of the Terms of Service.</p> <p>15 Q. BY MR. BROOME: What are you looking at, 09:32:58</p> <p>16 Mr. Castillo?</p> <p>17 A. I'm looking at your Terms of Service</p> <p>18 (indicating).</p> <p>19 Q. Do you have a binder of documents in front of</p> <p>20 you right now? 09:33:05</p> <p>21 A. No, I do not. I have three documents in front</p> <p>22 of me. One of them is the Terms of Service.</p> <p>23 Q. I'm sorry, what are the three documents you</p> <p>24 have?</p> <p>25 A. One is the Terms of Service, one is the Privacy 09:33:12</p> <p style="text-align: right;">Page 27</p>	<p>1 MR. BROOME: All right. So Ryan, can we get</p> <p>2 copies of each of the documents that is currently sitting</p> <p>3 in front of Mr. Castillo?</p> <p>4 MR. MCGEE: Certainly.</p> <p>5 Q. BY MR. BROOME: Okay. All right. 09:34:46</p> <p>6 So we'll come back to those. I definitely want</p> <p>7 to ask you some questions about the versions that are in</p> <p>8 front of you, Mr. Castillo.</p> <p>9 A. Okay.</p> <p>10 Q. But your testimony is that the Terms of Service 09:34:57</p> <p>11 and the Privacy Policy are the same document?</p> <p>12 A. Well, the Privacy Policy is contained in the</p> <p>13 Terms of Service. It says on page 2 Privacy Policy.</p> <p>14 Q. What's the full sentence?</p> <p>15 A. It says: "Privacy Policy. Click here to review 09:35:16</p> <p>16 the Google Privacy Policy."</p> <p>17 Q. Right. And then if you click there, it takes</p> <p>18 you to a different document; right?</p> <p>19 A. Yeah.</p> <p>20 Q. Okay. So the Terms of Service -- and let me -- 09:35:28</p> <p>21 let me just to give you some context here. I'm not</p> <p>22 quibbling with you about whether the Terms of Service</p> <p>23 incorporates the Privacy Policy in some legal sense. The</p> <p>24 lawyers can argue about that if they'd like. I'm just</p> <p>25 asking if you understand -- because I want to -- when you 09:35:51</p> <p style="text-align: right;">Page 29</p>

<p>1 A. That doesn't seem right. Because it doesn't say 2 make any reference to key terms.</p> <p>3 Q. Momentito. Momentito.</p> <p>4 A. Yeah. It seems just to my initial observation, 5 it seems this document's incomplete. 10:39:53</p> <p>6 Q. Okay. Put aside -- putting that aside, the key 7 terms, do you see any reference in here to Incognito or 8 private browsing?</p> <p>9 MR. MCGEE: I would again renew my objection 10 about the hyperlinks that are represented in the document 10:40:35 11 that seem incomplete. So object to the form and --</p> <p>12 MR. BROOME: You have a standing objection on 13 that, I think.</p> <p>14 MR. MCGEE: Okay.</p> <p>15 THE WITNESS: I've reviewed the document. I 10:40:50 16 can't find anything that says Incognito in here. Did I 17 miss it? I don't -- I don't see it.</p> <p>18 Q. BY MR. BROOME: Is there a -- my question's a 19 little broader.</p> <p>20 Do you see anything referencing Incognito, 10:41:04 21 private browsing, or any other sort of similar concept --</p> <p>22 A. Okay.</p> <p>23 Q. -- in this document?</p> <p>24 A. There's a section on information security. "We 25 offer two-step verification when you access your Google 10:41:32 Page 66</p>	<p>1 figuring out basic stuff, like which language you speak, 2 more complex things, like which ads you'll find more" -- 3 "most useful, or the people who matter most to you 4 online."</p> <p>5 Do you see that? 10:43:15</p> <p>6 A. Yes, I see that.</p> <p>7 Q. And below that, it says: "We collect 8 information in two ways."</p> <p>9 Do you see that?</p> <p>10 A. Okay. 10:43:20</p> <p>11 Q. All right. And then if you go to the second 12 bullet, it says -- and now we're on page 2. It says: 13 "Information We Get From Your Use of Our Services."</p> <p>14 Do you see that?</p> <p>15 A. Yes, I see that paragraph. 10:43:37</p> <p>16 Q. All right. It says: "We may collect 17 information about the services that you use and how you 18 use them, like when you visit a website that uses our 19 advertising services or you view and interact with our 20 ads and content." 10:43:49</p> <p>21 Do you see that?</p> <p>22 A. I see it.</p> <p>23 Q. And is it clear to you -- is that statement 24 clear to you that when you visit a website that uses 25 our -- the Google's advertising services or you view or 10:43:59 Page 68</p>
<p>1 Account and a Safe Browsing feature in Google Chrome."</p> <p>2 That's hyperlinked and there's no -- there's no 3 explanation of what that's about. So that could be in 4 there. I don't -- but I don't see it.</p> <p>5 Q. You're just speculating; right? 10:41:49</p> <p>6 A. I'm speculating, but more importantly -- yeah.</p> <p>7 Q. Okay. More importantly what?</p> <p>8 A. I don't see it.</p> <p>9 Q. You don't see any reference to Incognito or 10 private browsing in this document; right? 10:42:18</p> <p>11 A. No.</p> <p>12 Q. Okay. Do you see it on page 2? Well, actually, 13 let me go off of it.</p> <p>14 MR. BROOME: Sorry, Ryan. You said at 11:00 you 15 need to break, or when do you need to break? 10:42:43</p> <p>16 MR. MCGEE: Yeah, at 10:55. So about 17 12 minutes.</p> <p>18 MR. BROOME: That should be fine.</p> <p>19 Q. Let me go up to page 1, Mr. Castillo.</p> <p>20 A. Okay. 10:42:55</p> <p>21 Q. "Information We Collect." Do you see that 22 heading?</p> <p>23 A. Okay, I see it.</p> <p>24 Q. All right. It says: "We collect information to 25 provide better services to all of our users, from 10:43:04 Page 67</p>	<p>1 interact with Google's ads and content, that Google may 2 receive information?</p> <p>3 MR. MCGEE: Object to the form.</p> <p>4 You can answer.</p> <p>5 THE WITNESS: So when I -- when I see this -- 10:44:12 6 when I read this paragraph, I see that Google may collect 7 information when -- you know, Google may collect 8 information on the websites I'm visiting. Yes, I see 9 that.</p> <p>10 Q. BY MR. BROOME: Okay. And that's clear to you; 10:44:28 11 right?</p> <p>12 A. That's clear.</p> <p>13 Q. Okay. And then the next bullet says: "Device 14 Information." It says: "We may" -- and it's sort of 15 indented. Well, actually, let me back up. 10:44:39</p> <p>16 At the sentence we just read says: "We may 17 collect information about the services that you use and 18 how you use them, like when you visit a website that uses 19 our advertising services or you view and interact with 20 our ads and content." 10:44:55</p> <p>21 Right? Did I read that correctly?</p> <p>22 A. Are you asking me if you read that correctly?</p> <p>23 Yes, you read that correctly.</p> <p>24 Q. And then it says: "This information includes," 25 colon. Do you see that? 10:45:06 Page 69</p>

<p>1 A. Yes, I see it.</p> <p>2 Q. And then the next bullet says: "Device</p> <p>3 Information." It says: "We may collect device specific</p> <p>4 information such as your hardware model, operating system</p> <p>5 version, unique device identifiers, and mobile network 10:45:19</p> <p>6 information, including phone number. Google may</p> <p>7 associate your device identifiers or phone number with</p> <p>8 your Google Account."</p> <p>9 Do you see that?</p> <p>10 A. I see it. 10:45:33</p> <p>11 Q. Okay. And is that clear to you?</p> <p>12 A. It's clear to me that when I'm searching Google</p> <p>13 in regular mode, and not Incognito mode, that you collect</p> <p>14 this data.</p> <p>15 Q. Okay. And then there's log information and 10:45:46</p> <p>16 location information, unique application numbers, local</p> <p>17 storage, cookies, and anonymous identifiers.</p> <p>18 Do you see all those headings?</p> <p>19 A. Yes. I see the log information and all the</p> <p>20 details you have in that paragraph. 10:46:07</p> <p>21 Q. Okay. And it's clear to you that Google may</p> <p>22 receive that information when you visit a website that</p> <p>23 uses Google's advertising services; correct?</p> <p>24 A. That's a very broad question --</p> <p>25 MR. MCGEE: Objection. 10:46:20</p> <p style="text-align: right;">Page 70</p>	<p>1 visit a website that uses our advertising services or you</p> <p>2 view and interact with our ad or contents." And you said</p> <p>3 that's clear to you.</p> <p>4 MR. MCGEE: Object to the form.</p> <p>5 Q. BY MR. BROOME: Are you following me so far? 10:47:36</p> <p>6 I'm just trying to break it down in bite size --</p> <p>7 A. Okay. So ask your question again because that</p> <p>8 was more like a statement.</p> <p>9 Q. I'm just trying to orient you.</p> <p>10 A. All right. I got it. 10:47:46</p> <p>11 Q. Then it says: "This information includes," and</p> <p>12 it lists, you know, six categories of information.</p> <p>13 Do you see that?</p> <p>14 A. I see five. I don't see six.</p> <p>15 Q. You don't see six. Device information? 10:48:03</p> <p>16 A. Wait. I'm still on log information. Details of</p> <p>17 how you use our services, such as search queries,</p> <p>18 telephone log, internet protocol addresses, device event</p> <p>19 information, cookies. That's five items. You said six.</p> <p>20 Q. Yeah. I'm looking at the bolded headings; 10:48:21</p> <p>21 right? Do you see it says: "This information includes,"</p> <p>22 and then it has --</p> <p>23 A. Oh, I see. You're looking at a multi pages at</p> <p>24 the same time. I'm sorry. I'm limited here. I can only</p> <p>25 go one page at a time. 10:48:33</p> <p style="text-align: right;">Page 72</p>
<p>1 THE WITNESS: -- because it does not specific</p> <p>2 apply to all the times that I'm using Google.</p> <p>3 Q. BY MR. BROOME: Well, it says when -- the</p> <p>4 limiter is in the -- the bullet, information we get from</p> <p>5 your use of our services. 10:46:33</p> <p>6 Do you see that?</p> <p>7 A. So does this paragraph mean that when I'm in</p> <p>8 Incognito mode and I'm specifically not consenting -- not</p> <p>9 consenting in a third-party state like California -- that</p> <p>10 you're collecting that data? Is that what you are 10:46:48</p> <p>11 representing that Google does by that question?</p> <p>12 Q. I'm -- you're going pretty far afield there,</p> <p>13 Mr. Castillo. Respectfully, I'd just like ask you to</p> <p>14 focus on the question.</p> <p>15 A. Okay. Fair enough. 10:47:04</p> <p>16 Q. I understand you have your allegations and you</p> <p>17 have your theory about the case, and the lawyers will --</p> <p>18 you know, you've got a very capable lawyer.</p> <p>19 A. Fair enough.</p> <p>20 Q. We'll all argue about that. 10:47:12</p> <p>21 A. That was a broad question, to be -- to be fair.</p> <p>22 It was a very broad question.</p> <p>23 Q. I'm just asking you about the document in front</p> <p>24 of you. It says: "We may collect information about the</p> <p>25 services that you use and how you use them, like when you 10:47:24</p> <p style="text-align: right;">Page 71</p>	<p>1 So let's see, one, two, three, four, five, six.</p> <p>2 Now I understand what you mean by six. You're not just</p> <p>3 talking about log information. You're talking about in</p> <p>4 addition to the things they collect. Log information,</p> <p>5 device information, location information, unique 10:48:50</p> <p>6 application numbers, local storage, cookies, and</p> <p>7 anonymous identifiers, all things you're saying Google</p> <p>8 collects. Okay, I see it.</p> <p>9 Q. Yeah. Is that clear to you, that Google</p> <p>10 collects that information when you visit a web -- well, 10:49:02</p> <p>11 strike that. Let me -- let me start again.</p> <p>12 Based on this document, as you're reading this</p> <p>13 document, is it clear to you that Google receives that</p> <p>14 information, those categories that you just listed, when</p> <p>15 you visit a website that uses Google's advertising 10:49:15</p> <p>16 services or you view or you're at Google's ads and</p> <p>17 content?</p> <p>18 MR. MCGEE: Object to the form.</p> <p>19 THE WITNESS: This document states that Google</p> <p>20 collects these information. This document from -- 10:49:31</p> <p>21 from -- from -- from 2012 states that Google collects all</p> <p>22 these items when I go to a website. Yes.</p> <p>23 Q. BY MR. BROOME: Okay.</p> <p>24 A. That's clear to me.</p> <p>25 Q. And there's nothing in this document, at least, 10:49:44</p> <p style="text-align: right;">Page 73</p>

<p>1 websites?</p> <p>2 A. Yes, I did -- I understand that, and I</p> <p>3 understand that as an --</p> <p>4 MR. MCGEE: Mr. Castillo, I just want to lodge</p> <p>5 an objection to the use of the term "basic mode." So 12:36:30</p> <p>6 object to the form. It's been previously --</p> <p>7 MR. BROOME: Objection, Ryan. You literally</p> <p>8 just interrupted the witness in the middle of an answer,</p> <p>9 and now you're -- now you're putting words in his mouth.</p> <p>10 Come on. 12:36:45</p> <p>11 MR. MCGEE: What words have I put in his mouth,</p> <p>12 Steve? I'm trying to lodge an objection. I held my</p> <p>13 hands up on the screen to try to indicate to Mr. Castillo</p> <p>14 that I'm trying to lodge an objection, and I am just</p> <p>15 simply making -- I am lodging an objection to the use of 12:36:58</p> <p>16 the term "basic mode."</p> <p>17 I didn't tell him what to say, didn't say what</p> <p>18 it says in the discovery, or anything else.</p> <p>19 So I take -- take umbrage to your</p> <p>20 characterization there. 12:37:12</p> <p>21 Q. BY MR. BROOME: Okay. Let me ask the question</p> <p>22 again.</p> <p>23 A. Okay.</p> <p>24 Q. Mr. McGee will have another objection, I'm sure.</p> <p>25 If you're just in Chrome's -- well, let me ask 12:37:30</p> <p style="text-align: right;">Page 98</p>	<p>1 websites; is that accurate?</p> <p>2 MR. MCGEE: Object to the form.</p> <p>3 THE WITNESS: So to answer your question, I</p> <p>4 understand when I am not in Incognito mode that Google</p> <p>5 will intercept my communications and that you've 12:39:04</p> <p>6 characterized it that I've given some kind of passive</p> <p>7 consent based on my review of the Terms of Service and</p> <p>8 the Privacy Policy at that point to -- for them to</p> <p>9 collect data and to show me ads and what have you related</p> <p>10 to my searches. 12:39:24</p> <p>11 But your question is only referred to when I'm</p> <p>12 searching -- making browser searches in a mode that is</p> <p>13 other than Incognito mode; is that correct?</p> <p>14 Q. BY MR. BROOME: Yeah, and I'm not touching on</p> <p>15 consent. I didn't mention consent. I'm just trying to 12:39:38</p> <p>16 get your understanding of the Google Privacy Policy and</p> <p>17 the type of information Google receives when you visit</p> <p>18 third-party sites and apps that use Google services.</p> <p>19 A. Right.</p> <p>20 Q. And I specifically limited my question to, you 12:39:53</p> <p>21 know, modes other than Incognito mode.</p> <p>22 A. Okay. So I would -- it's my understanding that</p> <p>23 Google collects that kind of data when I am not in</p> <p>24 Incognito mode, per the statements that are written in</p> <p>25 the Google Privacy Policy. 12:40:12</p> <p style="text-align: right;">Page 100</p>
<p>1 it this way: Do you understand that Chrome has various</p> <p>2 modes?</p> <p>3 A. Please explain various mode -- modes. Are you</p> <p>4 referring to Incognito mode? I'm familiar with Incognito</p> <p>5 mode. 12:37:42</p> <p>6 Q. No. There's five modes in Chrome: There's</p> <p>7 basic mode, which is you just download the browser and</p> <p>8 start using it; there's sign-in mode, where you can sign</p> <p>9 in to your Google Account; there's synch mode, which I</p> <p>10 don't know if you know anything about that one; and then 12:37:58</p> <p>11 there's Incognito mode and guest mode.</p> <p>12 Are you familiar with those modes?</p> <p>13 A. All those modes. There's a lot of modes. I</p> <p>14 would say after you've explained them that way, I'm</p> <p>15 familiar with each of those, but I've never heard it 12:38:15</p> <p>16 explained to me in five different modes of signing into</p> <p>17 Google.</p> <p>18 Q. Okay. And then I was asking you if you</p> <p>19 understand that Google is, to use your term, intercepting</p> <p>20 your data when you visit third-party websites, non-Google 12:38:28</p> <p>21 websites. Let's use that term.</p> <p>22 And you understand that in the modes that</p> <p>23 don't -- that aren't Incognito mode, your understanding,</p> <p>24 based on reading the Privacy Policy, is that Google</p> <p>25 receives your data when you -- when you visit non-Google 12:38:44</p> <p style="text-align: right;">Page 99</p>	<p>1 Q. Okay. And was that your understanding before</p> <p>2 you got involved in this case?</p> <p>3 A. Yes.</p> <p>4 Q. Based on -- that was your understanding based on</p> <p>5 reading the Google Privacy Policy? 12:40:25</p> <p>6 A. That was based on my understanding reading the</p> <p>7 Terms of Service, which incorporate the Google Privacy</p> <p>8 Policy.</p> <p>9 Q. Great. Thank you.</p> <p>10 If you look at page 7. 12:40:48</p> <p>11 A. Page 7. Okay.</p> <p>12 Q. Yes.</p> <p>13 A. The weeds here. Okay, I'm on page 7.</p> <p>14 Q. The heading there that says: "Managing,</p> <p>15 Reviewing and Updating Your Information"? 12:41:07</p> <p>16 A. Okay. I see it.</p> <p>17 Q. And it says: "We also built a place for you to</p> <p>18 review and control information saved in your Google</p> <p>19 Account. Your Google Account includes."</p> <p>20 Do you see that? 12:41:23</p> <p>21 A. "We also built a place for you to review and</p> <p>22 control information saved in your Google Account. Your</p> <p>23 Google Account includes." Yeah, I see that.</p> <p>24 Q. Yeah. And then it lists privacy controls and</p> <p>25 activity controls. 12:41:43</p> <p style="text-align: right;">Page 101</p>

<p>1 A. I was identifying my particular computer or 2 device.</p> <p>3 Q. All right. And is it your testimony that if 4 Google -- Google had said in this sentence that we've 5 just been discussing, had said sites may deposit new 13:55:47 6 cookies on your local system, adding the word "local" 7 before "system," then you would understand this sentence? 8 But because the word "local" is not there, you can't 9 understand it?</p> <p>10 MR. MCGEE: Object to the -- mischaracterizes 13:56:00 11 testimony.</p> <p>12 THE WITNESS: Yeah. The only reason I used the 13 term "local" is you brought it up earlier, and it's up 14 above in the above pages. So it is clear above. Here, 15 it's vague. 13:56:15</p> <p>16 Q. BY MR. BROOME: Okay. So when Google says 17 "local system," you understand that?</p> <p>18 A. Yeah, it makes it more defined. It makes it 19 more specific.</p> <p>20 Q. Okay. So when Google says "your system," you're 13:56:20 21 not sure what Google means?</p> <p>22 A. Yeah, because earlier it said your local system 23 and now, this says your system.</p> <p>24 Q. Okay.</p> <p>25 A. As if there's a difference. And there might be. 13:56:35 Page 142</p>	<p>1 A. I use it frequently, but I'm not exactly sure 2 how often I use it. I don't know if it's once a day, 3 twice a day, four times a week, five times a week. I use 4 it -- I use it frequently.</p> <p>5 Q. Okay. And that -- you've been using it 13:58:45 6 frequently including in the time period after you became 7 involved in this litigation?</p> <p>8 A. Yes.</p> <p>9 Q. And have you enabled cookie blockers within 10 Incognito mode? 13:59:01</p> <p>11 A. Not to my knowledge, and the -- and not that I 12 recall. And more importantly, I don't see why I would 13 need to. Do I need to put cookie blockers while I'm in 14 Incognito mode? I mean, think about the definition of 15 Incognito mode. You just said you're not -- that Google 13:59:19 16 won't -- we went through all the things Google won't do, 17 and why would I need to use a cookie blocker when I'm in 18 Incognito?</p> <p>19 Q. Well, we just looked at the Chrome Privacy 20 Notice; right? It says sites may deposit new cookies on 13:59:32 21 your system while you are in these modes. So you know 22 from this document that Google may be putting cookies on 23 your browser while you're in Incognito mode; right?</p> <p>24 A. Right. But Google's not supposedly recording 25 that. That's what you said in your Google Privacy 13:59:50 Page 144</p>
<p>1 I'm not an engineer. I don't know.</p> <p>2 Q. When did you start using Incognito mode?</p> <p>3 A. Is -- was your question when did I start using 4 Incognito mode? Is that in reference to when I ever used 5 it? 13:56:57</p> <p>6 Q. When did you -- when did you first use Incognito 7 mode, approximately? I know you're not going to be able 8 to tell me an exact date.</p> <p>9 A. I don't recall. I don't recall. I started 10 using it when it was -- when it was available to me. 13:57:09</p> <p>11 Q. Can you give me any -- any -- any temporal 12 context whatsoever?</p> <p>13 A. Some time prior to the class period.</p> <p>14 Q. So some time prior to 2016?</p> <p>15 A. Yes. 13:57:27</p> <p>16 Q. And how frequently would you say you used it 17 over the years?</p> <p>18 A. I've used it I would say fairly frequently.</p> <p>19 Q. Once a day, once a week, once a month, once a 20 year? 13:57:51</p> <p>21 A. I'm not -- I'm not exactly sure. I use it 22 fairly frequently.</p> <p>23 Q. And are you still using it?</p> <p>24 A. Yes.</p> <p>25 Q. Are you still using it frequently? 13:58:23 Page 143</p>	<p>1 Policy. You said I was in control. You said that I can 2 control what -- what Google retains and stores. And you 3 said I had this way to view the web privately using 4 Chrome Incognito mode.</p> <p>5 And across our services, you can adjust your 14:00:06 6 privacy settings to control what we collect and how your 7 information is used, and you identified as the only thing 8 in here as Incognito mode is the choice to choose do that 9 in your privacy statement.</p> <p>10 Q. But your testimony is that in the Privacy Policy 14:00:21 11 that only privacy settings Google identifies in the 12 entire Privacy Policy is Incognito mode?</p> <p>13 MR. MCGEE: Object to the form, mischaracterizes 14 prior testimony.</p> <p>15 Q. BY MR. BROOME: (Inaudible.) 14:00:46</p> <p>16 THE REPORTER: Excuse me, Counsel. Can you 17 start your question again, please.</p> <p>18 MR. BROOME: Are you talking to me?</p> <p>19 THE REPORTER: I was. I was, yes.</p> <p>20 (Interruption in proceedings.) 21 (Discussion off the record.)</p> <p>22 Q. BY MR. BROOME: You were referring to the 23 March 2018 Privacy Policy, I believe. And you said: 24 "The only thing in here in Incognito mode" -- or sorry. 25 Let me back up. 14:01:34 Page 145</p>


<p>1 STATE OF CALIFORNIA) ss: 2 COUNTY OF MARIN) 3 4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do 5 hereby certify: 6 That the foregoing deposition testimony was 7 taken before me at the time and place therein set forth 8 and at which time the witness was administered the oath; 9 That testimony of the witness and all objections 10 made by counsel at the time of the examination were 11 recorded stenographically by me, and were thereafter 12 transcribed under my direction and supervision, and that 13 the foregoing pages contain a full, true and accurate 14 record of all proceedings and testimony to the best of my 15 skill and ability. 16 I further certify that I am neither counsel for 17 any party to said action, nor am I related to any party 18 to said action, nor am I in any way interested in the 19 outcome thereof. 20 IN WITNESS WHEREOF, I have subscribed my name 21 this 10th day of February, 2022. 22 23  24 25 LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462</p> <p style="text-align: right;">Page 262</p>	<p>1 xx Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF 2 Transcript - The witness should review the transcript and 3 make any necessary corrections on the errata pages included 4 below, notating the page and line number of the corrections. 5 The witness should then sign and date the errata and penalty 6 of perjury pages and return the completed pages to all 7 appearing counsel within the period of time determined at 8 the deposition or provided by the Federal Rules. 9 ___ Federal R&S Not Requested - Reading & Signature was not 10 requested before the completion of the deposition. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 264</p>
<p>1 RYAN MCGEE, ESQ. 2 rmcgee@forthepeople.com 3 February 11, 2022 4 RE: BROWN vs. GOOGLE LLC 5 FEBRUARY 8, 2022, CHRISTOPHER CASTILLO, JOB NO. 5077508 6 The above-referenced transcript has been 7 completed by Veritext Legal Solutions and 8 review of the transcript is being handled as follows: 9 ___ Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext 10 to schedule a time to review the original transcript at 11 a Veritext office. 12 ___ Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF 13 Transcript - The witness should review the transcript and 14 make any necessary corrections on the errata pages included 15 below, notating the page and line number of the corrections. 16 The witness should then sign and date the errata and penalty 17 of perjury pages and return the completed pages to all 18 appearing counsel within the period of time determined at 19 the deposition or provided by the Code of Civil Procedure. 20 ___ Waiving the CA Code of Civil Procedure per Stipulation of 21 Counsel - Original transcript to be released for signature 22 as determined at the deposition. 23 ___ Signature Waived – Reading & Signature was waived at the 24 time of the deposition. 25</p> <p style="text-align: right;">Page 263</p>	<p>1 I declare under the penalty of perjury under the 2 laws of the State of California that the foregoing is 3 true and correct. 4 Executed on _____, 2022, at 5 _____, _____. 6 7 8 9 10 11 12 CHRISTOPHER CASTILLO 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 265</p>

EXHIBIT 29

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHASOM BROWN, WILLIAM BYATT,) Case No.
JEREMY DAVIS, CHRISTOPHER) 5:20-cv-03664-LHK-
CASTILLO, and MONIQUE TRUJILLO) SVK
individually and on behalf of)
all other similarly situated,)
)
Plaintiffs,)
)
vs.)
)
GOOGLE LLC,)
)
Defendant.)
_____)

VIRTUAL VIDEOCONFERENCE VIDEO-RECORDED
DEPOSITION OF MONIQUE TRUJILLO

Friday, February 11, 2022
Remotely Testifying from Los Angeles, California

Reported By:
Hanna Kim, CLR, CSR No. 13083
Job No. 5077549

<p>1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF CALIFORNIA 3 4 CHASOM BROWN, WILLIAM BYATT,) Case No. JEREMY DAVIS, CHRISTOPHER) 5:20-cv-03664-LHK- 5 CASTILLO, and MONIQUE TRUJILLO) SVK individually and on behalf of) 6 all other similarly situated,)) 7 Plaintiffs,)) 8 vs.)) 9 GOOGLE LLC,)) 10 Defendant.) _____) 11 12 13 14 Virtual videoconference video-recorded 15 deposition of MONIQUE TRUJILLO, remotely 16 testifying from Los Angeles, California, 17 taken on behalf of the Defendant, on 18 Friday, February 11, 2022, before Hanna 19 Kim, CLR, CSR No. 13083. 20 21 22 23 24 25</p>	<p>1 REMOTE APPEARANCES OF COUNSEL: (CONTINUED) 2 3 For Defendant: 4 QUINN EMANUEL URQUHART & SULLIVAN, LLP 5 BY: JOMAI A. CRAWFORD, ESQ. 6 BY: TRACY GAO, ESQ. 7 51 Madison Avenue, 22nd Floor 8 New York, New York 10010 9 212.849.7000 10 jomairecrawford@quinnemanuel.com 11 12 Also Present: 13 SCOTT SLATER, Videographer 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 2	Page 4
<p>1 REMOTE VIDEOCONFERENCE APPEARANCES OF COUNSEL: 2 3 For Plaintiffs: 4 BOIES SCHILLER FLEXNER LLP 5 BY: ROSSANA BAEZA, ESQ. 6 BY: MARK C. MAO, ESQ. 7 100 SE 2nd St., 28th Floor 8 Miami, Florida 33131 9 305.539.8400 10 rbaeza@bsflp.com 11 mgao@bsflp.com 12 -and- 13 MORGAN & MORGAN 14 BY: RYAN J. McGEE, ESQ. 15 201 N. Franklin Street, 7th Floor 16 Tampa, Florida 33602 17 813.223.5505 18 rmcgee@forthepeople.com 19 20 21 22 23 24 25</p>	<p>1 INDEX OF EXAMINATION 2 3 WITNESS: MONIQUE TRUJILLO 4 EXAMINATION PAGE 5 BY MS. CRAWFORD: 11, 287 6 BY MS. BAEZA: 276, 293 7 8 QUESTIONS INSTRUCTED NOT TO ANSWER: 9 PAGE.....LINE 10 17.....17 11 82.....6 12 87.....2 13 --o0o-- 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 3	Page 5

<p>1 A. Yes.</p> <p>2 Q. Okay. Do you use the internet in</p> <p>3 connection with your position?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. What's the highest level of -- 09:40:53</p> <p>6 actually, let me take a step back.</p> <p>7 Have you had any other jobs before</p> <p>8 becoming a regional manager at Curative two years</p> <p>9 ago?</p> <p>10 A. Yes. 09:41:08</p> <p>11 Q. Okay. What positions have you held and</p> <p>12 when?</p> <p>13 A. Before Curative, I was a senior associate</p> <p>14 at Nordstrom.</p> <p>15 Q. And how long were you a senior associate 09:41:30</p> <p>16 at Nordstrom?</p> <p>17 A. About a year and a half.</p> <p>18 Q. And before that?</p> <p>19 A. Before that, I was in a showroom in</p> <p>20 Santa Monica. 09:41:54</p> <p>21 Q. What kind of showroom?</p> <p>22 A. The company was Farrow & Ball. And it --</p> <p>23 it's paint and wallpaper.</p> <p>24 Q. Okay. And how long were you at the</p> <p>25 showroom in Santa Monica? 09:42:14</p> <p style="text-align: right;">Page 26</p>	<p>1 A. The article that talked about how</p> <p>2 incognito was not sticking to its privacy policy.</p> <p>3 Q. And do you remember where you saw this</p> <p>4 article? Was it online, was it in print -- print</p> <p>5 form, or some other medium? 09:44:46</p> <p>6 A. It was online.</p> <p>7 Q. And was the article published by a -- a</p> <p>8 law firm, or was it something like you would read,</p> <p>9 let's say, you know, in the daily news or, you</p> <p>10 know, the -- The Washington Post? 09:45:02</p> <p>11 A. It was -- I don't recall. It was not</p> <p>12 posted by the law firm itself.</p> <p>13 Q. But it instructed you to contact the law</p> <p>14 firm --</p> <p>15 MS. BAEZA: Objection. Mischar- -- 09:45:24</p> <p>16 BY MS. CRAWFORD:</p> <p>17 Q. -- without the --</p> <p>18 MS. BAEZA: Sorry, Jomaire.</p> <p>19 MS. CRAWFORD: Well, give me a second,</p> <p>20 Rosy. Sorry. I'm -- I'm -- I wasn't finished with 09:45:30</p> <p>21 the question.</p> <p>22 BY MS. CRAWFORD:</p> <p>23 Q. Did the article instruct you to contact</p> <p>24 counsel?</p> <p>25 A. No. 09:45:37</p> <p style="text-align: right;">Page 28</p>
<p>1 A. A little over a year.</p> <p>2 Q. Any other jobs that we haven't covered</p> <p>3 yet?</p> <p>4 A. I -- before Farrow & Ball, I was working</p> <p>5 on sets doing costuming. 09:42:41</p> <p>6 Q. Costume design?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And how long did you do that?</p> <p>9 A. I've been doing that on and off since</p> <p>10 2000. 09:42:56</p> <p>11 Q. Okay. What's the highest level of</p> <p>12 education you've completed?</p> <p>13 A. An associate's in college.</p> <p>14 Q. Okay. And when did you get your</p> <p>15 associate's degree? 09:43:14</p> <p>16 A. 2006.</p> <p>17 Q. And what did you study and where?</p> <p>18 A. That was from Los Angeles City College.</p> <p>19 Q. And you studied?</p> <p>20 A. English. 09:43:38</p> <p>21 Q. Okay. How did you get involved in this</p> <p>22 case?</p> <p>23 A. I saw -- I saw the article, and I read it</p> <p>24 and reached out to the firm.</p> <p>25 Q. Which article are you referring to? 09:44:01</p> <p style="text-align: right;">Page 27</p>	<p>1 Q. Okay. What did the article say?</p> <p>2 A. It just spoke about its findings and...</p> <p>3 Q. And when did you -- do you remember when</p> <p>4 you viewed that article?</p> <p>5 A. I do not. 09:46:04</p> <p>6 Q. Roughly speaking, was it in, you know,</p> <p>7 2000- -- 2022? Was it in 2016, '17, '18? Again,</p> <p>8 roughly speaking.</p> <p>9 A. I would say 2020.</p> <p>10 Q. After this lawsuit was filed? 09:46:35</p> <p>11 A. I don't have the exact dates of when it</p> <p>12 was filed and when the article was put out.</p> <p>13 Q. Okay. And do you happen to know who</p> <p>14 published the article that you're referring to?</p> <p>15 A. I do not. 09:47:00</p> <p>16 Q. Okay. And how did you ultimately get</p> <p>17 involved in this lawsuit?</p> <p>18 A. I --</p> <p>19 MS. BAEZA: Objection. Form. Vague.</p> <p>20 BY MS. CRAWFORD: 09:47:29</p> <p>21 Q. You can answer.</p> <p>22 A. I contacted the law firm and asked to</p> <p>23 speak with somebody because what I had read was</p> <p>24 what I had experienced myself, and it was just</p> <p>25 maddening. 09:47:52</p> <p style="text-align: right;">Page 29</p>

<p>1 follow, you'll browse the web and then click out 2 of the browser window once you're done browsing to 3 ensure that there is no record, perhaps, of -- 4 of -- of your visit to a specific site; is that 5 right? 09:55:21 6 A. That's right. 7 Q. Okay. Do you do anything -- actually, let 8 me ask. 9 Do you do that when you're both browsing 10 in private mode and a non-private mode? 09:55:34 11 A. It depends on what I am searching for. So 12 if it's something that I don't want anybody else 13 to see and I'm in private mode, I will exit the 14 window. 15 Q. And if you're searching for something that 09:55:58 16 you don't want someone to see when you're not in 17 private mode, would you follow the same practice? 18 A. Yes. 19 Q. Okay. Are there any other precautions -- 20 oh, it looked like you were going to say 09:56:16 21 something. Were you -- 22 A. No. 23 Q. -- not done answering the question? Okay. 24 A. No. Go on. 25 Q. Are there any other precautions that you 09:56:23 Page 34</p>	<p>1 A. Yes, I'm familiar. 2 Q. And do you read privacy policies of the 3 companies whose websites you visit online? 4 A. Yes, I do. 5 Q. Okay. Is that an additional precaution 09:58:48 6 that you take, for example, reading the privacy 7 policies of the websites that you visit? 8 A. Yes. 9 Q. Would you say that you read the privacy 10 policies of most websites that you visit, some, or 09:59:06 11 none? 12 A. Most. 13 Q. Approximately how many times do you do 14 that in a given week? 15 A. In a given week, that's -- I read the 09:59:23 16 privacy policies when there's an initial account 17 setup or if there's an update. 18 Q. And how would you know whether there's an 19 update to a website's privacy policy? 20 A. I will receive an alert. 09:59:51 21 Q. Do you always -- do you know if you -- if 22 every website that you visit sends alerts when 23 their privacy policies are updated? 24 A. I don't know if every websites [sic] sends 25 a updated policy. 10:00:11 Page 36</p>
<p>1 take when you're browsing the web to ensure your 2 activity remains private? 3 A. Those three precautions are mostly what 4 I -- mainly the precautions I take. 5 Q. Okay. Do you take any precautions to 09:56:54 6 protect your privacy while you're using apps as 7 distinct from web browsing? 8 A. While -- while I'm using apps? 9 Q. Yes. 10 A. I'll exit the screen. 09:57:22 11 Q. Okay. Anything else? 12 A. Not for -- I can't think of precautions on 13 apps. Let me see, actually... 14 That's it for now. 15 Q. And when you exit a screen on an app, for 09:58:08 16 example, is it to ensure that, let's say, you 17 know, someone using your phone wouldn't be able to 18 see what you were looking at or what you were, you 19 know -- what you were doing? 20 A. Yes, that's correct. 09:58:19 21 Q. Okay. Are you familiar with something 22 called a privacy policy? 23 I believe so, based on some of the 24 documents that you've looked at to prepare, but I 25 just want to confirm. 09:58:34 Page 35</p>	<p>1 Q. But you imagine that some send such 2 notifications; right? 3 A. I've seen updated policies. I've received 4 them, but I don't know if every website does that 5 or how often they do it. 10:00:33 6 Q. Okay. Well, it sounds like you have a 7 habit of reading privacy policies. 8 Is that a fair characterization of what 9 you just described to me? 10 A. I don't know if I would say "a habit," but 10:00:45 11 it is something I read when it's initially 12 presented to me to move forward. 13 Q. And let's say it's -- it's not presented 14 to you in the context of an account creation 15 process. 10:01:12 16 Would you, nonetheless, view a privacy 17 policy that's on a -- a -- a website that you 18 visit? 19 A. It depends on the website. 20 Q. And how would you decide which websites' 10:01:36 21 privacy policies you might want to review and 22 which ones you maybe don't need to? 23 A. Well, for example, if I'm on the Ralphs 24 supermarket website, I wouldn't read their privacy 25 policy. 10:02:05 Page 37</p>

<p>1 that you purchased, you consider that to be 2 personal information? 3 A. Absolutely. Yes. 4 Q. Even if those products are not personally 5 tied to your name or to your identity? 10:42:08 6 A. Yes, even if I mean -- yes. Absolutely. 7 Q. So if you purchased let's say a -- a 8 spatula from Williams-Sonoma, you would 9 consider -- a simple line item that says "Spatula 10 purchased," you would consider that information to 10:42:34 11 be personal information to you, even if it doesn't 12 identify Monique Trujillo as the person who 13 purchased the spatula? 14 A. I would -- yes, I would consider that 15 personal, because even if it doesn't say my name, 10:42:47 16 it says everything else -- I mean, there's 17 everything else about me, and it wouldn't just be 18 a spatula. 19 If I'm shopping at Williams-Sonoma, I am 20 looking for a Star Wars spatula. You know, 10:43:05 21 it's -- if I'm -- it's something personal and 22 special to me. 23 Q. So I think I heard you say, you know, 24 there would be other information about you, but 25 what if it's just that someone purchased a Star 10:43:24 Page 54</p>	<p>1 Q. And these -- and -- and these different 2 types of information appears under a disclaimer 3 that reads "Collecting Information About You," 4 "Categories and Types of Personal Information We 5 Collect." 10:44:41 6 Do you see that? 7 A. Yes. 8 Q. Are you comfortable with Williams-Sonoma 9 collecting these different types of data on when 10 you visit its website? 10:44:50 11 A. Well, if I'm in regular mode, then I am 12 aware that information is being collected. If I'm 13 in incognito mode, I am not okay that information 14 is being collected without my consent. 15 Q. Now, looking at the section entitled 10:45:17 16 "Collecting Information About You," does it say 17 anything in here about whether you're visiting the 18 website and in incognito mode or not? 19 A. It does not. 20 Q. And so this section does not distinguish 10:45:46 21 between data collected when you're browsing in 22 incognito versus a non-incognito mode; is that 23 right? 24 A. It doesn't say that here, but it would 25 have been my choice to search in incognito mode or 10:46:07 Page 56</p>
<p>1 Wars spatula? There's no other information about 2 you. There's no other -- there -- your name's not 3 associated with it; neither your first name nor 4 your last name is associated. It's just that a 5 spatula with a Star Wars branding was purchased 10:43:39 6 from Williams-Sonoma. 7 Would that be personal to you? 8 A. Yes, it would be personal to me. 9 Q. How is that? 10 A. Because it's my choice what I chose to 10:43:49 11 purchase. 12 MS. BAEZA: Let me just assert my 13 object- -- objection here. 14 Objection. Form. Asked and answered. 15 Ms. Trujillo, if you could just give me 10:44:03 16 just one second after Jomaire finishes her 17 questions in case I have an objection. 18 THE WITNESS: Yes. 19 MS. BAEZA: That way I don't have to 20 interrupt you. I'm sorry. 10:44:14 21 BY MS. CRAWFORD: 22 Q. Now, we just went through this nine-point 23 bulleted list, and you said all this information 24 is your personal information; right? 25 A. Right. 10:44:23 Page 55</p>	<p>1 in regular mode. 2 Q. That's right. But I'm asking about the 3 Williams-Sonoma privacy policy and the information 4 that it tells you in here that it collects when 5 you visit its website. 10:46:22 6 So I just want to be clear that nothing in 7 Williams-Sonoma's disclosure here says that the 8 type of data they collect depends on whether 9 you're searching in private mode or not; is that 10 right? 10:46:43 11 A. That's right. But what I'm concerned with 12 is -- I understand that Williams-Sonoma is 13 disclaiming here -- or giving a disclosure here 14 that they will collect all this information. 15 That's fine. 10:47:04 16 But if I'm in incognito mode, I do not 17 want third parties or Google collecting 18 information without my consent. 19 Q. How would Williams-Sonoma know if you're 20 in incognito mode or private -- sorry, in a 10:47:20 21 private mode or not when you're visiting its 22 website? 23 A. It doesn't matter if Williams-Sonoma 24 knows. It would be Google's responsibility to 25 know that I'm in incognito mode and not collect my 10:47:42 Page 57</p>

<p>1 information.</p> <p>2 Q. Right. We're going to get to Google in</p> <p>3 one second, but if we could just stick with</p> <p>4 Williams-Sonoma. I want to just make sure I get a</p> <p>5 clear answer to the question. 10:47:57</p> <p>6 How would Williams-Sonoma, in your view,</p> <p>7 know that you are visiting its website in</p> <p>8 incognito mode versus a regular browsing mode?</p> <p>9 MS. BAEZA: Objection. Form. Asked and</p> <p>10 answered. 10:48:12</p> <p>11 BY MS. CRAWFORD:</p> <p>12 Q. You can answer.</p> <p>13 A. I don't know how Williams-Sonoma would</p> <p>14 know if I'm in incognito mode or in regular mode.</p> <p>15 Q. Okay. Now, we talked about this section 10:48:26</p> <p>16 here which talks about the information that</p> <p>17 Williams-Sonoma collects about you.</p> <p>18 I'm going to ask that you turn to the</p> <p>19 fifth page of this document, which talks about</p> <p>20 information -- actually, the fourth page of this 10:48:42</p> <p>21 document, which talks about information that</p> <p>22 Williams-Sonoma shares with third parties.</p> <p>23 If you go to the bottom of page 3,</p> <p>24 actually, which is where the heading "Third</p> <p>25 Parties" appears, can you let me know once you've 10:49:06</p> <p style="text-align: right;">Page 58</p>	<p>1 our Service Pro-" -- "Providers with the</p> <p>2 information needed for them to perform these</p> <p>3 services. We ask that our Service Providers</p> <p>4 confirm that their privacy practices are</p> <p>5 consistent with ours." [As read] 10:50:53</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Now, if you turn to page 5, you'll see,</p> <p>9 three paragraphs in, a section that begins with</p> <p>10 "We use." 10:51:02</p> <p>11 Let me know once you're there.</p> <p>12 A. I see it.</p> <p>13 Q. And this paragraph, do you mind reading</p> <p>14 this one aloud into the record?</p> <p>15 A. "We use Google Analytics on our web sites 10:51:06</p> <p>16 to collect usage data, to analyze how users use</p> <p>17 the web sites and to provide advertisements to you</p> <p>18 on other websites. For more information about how</p> <p>19 to opt out of having your information used by</p> <p>20 Google Analytics, visit..." [As read] 10:51:24</p> <p>21 Q. And then there's a URL, mm-hmm.</p> <p>22 A. Right.</p> <p>23 Q. What do you understand this paragraph to</p> <p>24 mean, Ms. Trujillo?</p> <p>25 A. That when I'm on the Williams-Sonoma 10:51:37</p> <p style="text-align: right;">Page 60</p>
<p>1 scrolled to the third page of this document?</p> <p>2 A. Hold on. It's a little blurry.</p> <p>3 MS. BAEZA: I'm sorry. Jomaire, you said</p> <p>4 the third page that says "Third Parties"?</p> <p>5 MS. CRAWFORD: Yep, at the very bottom it 10:49:25</p> <p>6 says "When We Share Information with Third</p> <p>7 Parties."</p> <p>8 MS. BAEZA: Okay. Thank you.</p> <p>9 MS. CRAWFORD: You're welcome.</p> <p>10 BY MS. CRAWFORD: 10:49:39</p> <p>11 Q. And, Ms. Trujillo, just let us all know</p> <p>12 when you're here.</p> <p>13 A. Okay. Is it in -- is it emboldened?</p> <p>14 Because I do not see -- 1, 2 --</p> <p>15 Q. Yes, ma'am. 10:49:48</p> <p>16 A. -- 3. I see. Okay. I see.</p> <p>17 Q. Okay. So you're at the section that's</p> <p>18 titled "When We Share Information with Third</p> <p>19 Parties." And underneath it it lists "Service</p> <p>20 Providers." 10:50:05</p> <p>21 It says, "We may contract with companies</p> <p>22 or persons to provide certain services including</p> <p>23 credit card processing, shipping, data analysis</p> <p>24 and management, promotional services, et cetera.</p> <p>25 We call them our Service Providers. We provide 10:50:18</p> <p style="text-align: right;">Page 59</p>	<p>1 website in regular mode, Google Analytics has</p> <p>2 access to my information.</p> <p>3 Q. But this paragraph here doesn't contain</p> <p>4 the words "regular mode," does it?</p> <p>5 A. It does not contain the words -- the 10:52:02</p> <p>6 word [verbatim] "regular mode," but in the Google</p> <p>7 policy -- it does say "Google Analytics" on there.</p> <p>8 And in the Google policy, it says that if I choose</p> <p>9 to set -- to search in incognito mode, I can</p> <p>10 control what is collected. 10:52:31</p> <p>11 Q. Are you reviewing from a document that you</p> <p>12 have in front of you?</p> <p>13 A. I am.</p> <p>14 Q. Okay. I would ask that while we're --</p> <p>15 while we're looking at a particular document, 10:52:43</p> <p>16 namely Exhibit Number 1, that you set aside the</p> <p>17 other documents that you have in front of you.</p> <p>18 I'll let you know if there's a point where</p> <p>19 it would be helpful for you to look at one of the</p> <p>20 documents that you have. But I ask that our -- 10:52:57</p> <p>21 the questions I'm asking are limited to the</p> <p>22 document and exhibit that we're focused on right</p> <p>23 now.</p> <p>24 And I'll let you know, again, if I need</p> <p>25 you to reference any of the other materials in 10:53:07</p> <p style="text-align: right;">Page 61</p>

<p>1 front of you.</p> <p>2 Do you mind doing that for me?</p> <p>3 A. I do not mind.</p> <p>4 Q. Okay. So then in -- in this paragraph</p> <p>5 here that begins with "We use Google Analytics on 10:53:17</p> <p>6 our web sites," I just want to confirm that</p> <p>7 nowhere in that paragraph does it reference</p> <p>8 "regular mode."</p> <p>9 Would you agree with that?</p> <p>10 A. Well, I can't agree with it because even 10:53:36</p> <p>11 if I don't reference any documents or other</p> <p>12 policies, I know that in regular mode I am</p> <p>13 consenting to Google Analytics collecting my</p> <p>14 information.</p> <p>15 Q. But, Ms. Trujillo -- oh, sorry. Go ahead 10:53:52</p> <p>16 if you're still answering the question.</p> <p>17 Okay.</p> <p>18 A. If I'm --</p> <p>19 MS. BAEZA: Go -- go ahead, Ms. Trujillo.</p> <p>20 You can finish. 10:54:10</p> <p>21 THE WITNESS: Without referencing any</p> <p>22 documents or policies, I know that if I'm in</p> <p>23 cogni- -- incognito mode, Google has promised not</p> <p>24 to collect my information.</p> <p>25 BY MS. CRAWFORD: 10:54:29</p> <p style="text-align: right;">Page 62</p>	<p>1 BY MS. CRAWFORD:</p> <p>2 Q. But, Ms. Trujillo, I do ask that you</p> <p>3 answer this narrow question, it's very simple,</p> <p>4 whether or not "private browsing mode" is</p> <p>5 mentioned anywhere in the paragraph that you just 10:55:44</p> <p>6 read aloud; yes or no?</p> <p>7 A. Well, in this specific paragraph, it is</p> <p>8 telling me, "We use Google Analytics on our web</p> <p>9 site to collect usage data" [as read].</p> <p>10 I know if I'm in regular mode or if I'm 10:56:05</p> <p>11 [verbatim] incognito mode, so it doesn't matter if</p> <p>12 Williams-Sonoma is mentioning to me "regular mode"</p> <p>13 or "incognito mode."</p> <p>14 Q. But Williams-Sonoma didn't say here, "We</p> <p>15 only share your information with Google when 10:56:20</p> <p>16 you're in regular mode." It doesn't say that</p> <p>17 here, does it?</p> <p>18 A. I mean, it's not Williams-Sonoma's</p> <p>19 responsibility. It's Google's responsibility to</p> <p>20 stand by their privacy policy where it says if I'm 10:56:40</p> <p>21 in incognito mode, they will not collect my</p> <p>22 information without my consent.</p> <p>23 Q. Are you aware of the data flow at issue in</p> <p>24 this case and how Google gets the data that you're</p> <p>25 suing Google for? 10:56:59</p> <p style="text-align: right;">Page 64</p>
<p>1 Q. Right. But, again, I -- I mentioned a</p> <p>2 moment ago we're going to talk about Google and</p> <p>3 Google's privacy policy and Google's disclosures</p> <p>4 and the information that you consider to be</p> <p>5 relevant in those documents. 10:54:40</p> <p>6 But before we get there, I'm just asking</p> <p>7 about the Williams-Sonoma policy that's in front</p> <p>8 of you.</p> <p>9 Can I get a straight answer, yes or no, to</p> <p>10 the -- two questions, whether or not this portion 10:54:51</p> <p>11 of Williams-Sonoma's policy mentions "incognito</p> <p>12 mode" or -- or pri- -- or "non-private browsing</p> <p>13 mode" specifically? Yes or no?</p> <p>14 MS. BAEZA: Objection. Form. Asked and</p> <p>15 answered. 10:55:06</p> <p>16 The -- Ms. -- Ms. Crawford, Ms. Trujillo</p> <p>17 is trying to give answers to the best of her</p> <p>18 ability. I think it's improper to ask her to</p> <p>19 answer just a yes-or-no question.</p> <p>20 MS. CRAWFORD: Well, the witness can say 10:55:23</p> <p>21 if -- if she's incapable of -- of answering yes or</p> <p>22 no as to whether or not certain words appear in the</p> <p>23 context of language she's just read. And if the</p> <p>24 witness is unable to do so, she can let us know</p> <p>25 that. 10:55:35</p> <p style="text-align: right;">Page 63</p>	<p>1 MS. BAEZA: Objection. Form. Vague as to</p> <p>2 "data form" [sic].</p> <p>3 BY MS. CRAWFORD:</p> <p>4 Q. You can answer.</p> <p>5 MS. BAEZA: "Data flow." My apologies. 10:57:09</p> <p>6 THE WITNESS: No, I'm not.</p> <p>7 BY MS. CRAWFORD:</p> <p>8 Q. Okay. So then in the lawsuit that's been</p> <p>9 filed in this case, the basic allegation is that</p> <p>10 when you visit a website like Williams-Sonoma 10:57:23</p> <p>11 using incognito mode, you were led to believe that</p> <p>12 Williams-Sonoma would not share or Google would</p> <p>13 not receive information from your private browsing</p> <p>14 session.</p> <p>15 When you visit websites like 10:57:46</p> <p>16 Williams-Sonoma, this specific disclosure -- let</p> <p>17 me know if this is your understanding -- this</p> <p>18 specific disclosure says Williams-Sonoma is</p> <p>19 sharing your information with Google. That is the</p> <p>20 same information that you've alleged Google 10:58:03</p> <p>21 improperly collected in the context of your</p> <p>22 lawsuit; isn't that right?</p> <p>23 A. No, that's not right.</p> <p>24 Q. What kind of information are you alleging</p> <p>25 Google has collected on you without your consent, 10:58:18</p> <p style="text-align: right;">Page 65</p>

<p>1 asked what was the supporting evidence for the</p> <p>2 assertion that Google tracking -- sorry --</p> <p>3 collecting data without consent was a known fact,</p> <p>4 you testified, quote, "Attorneys and experts</p> <p>5 looking into this." 11:48:05</p> <p>6 Do you remember that?</p> <p>7 A. Yes.</p> <p>8 Q. And when I asked which attorneys, you</p> <p>9 responded, quote, "The attorneys that work for the</p> <p>10 law firm that I hired in this case." 11:48:18</p> <p>11 Do you remember that?</p> <p>12 A. Yes.</p> <p>13 Q. So can you tell me in what context did the</p> <p>14 attorneys from the law firm that you hired in the</p> <p>15 context of this case made that representation? 11:48:31</p> <p>16 Was it in the form of the news article that you</p> <p>17 reviewed or in some other capacity?</p> <p>18 MS. BAEZA: I'm going to instruct</p> <p>19 Ms. Trujillo not to answer to the extent you're</p> <p>20 asking questions about communications outside of 11:48:44</p> <p>21 the article that she saw about the lawsuit.</p> <p>22 BY MS. CRAWFORD:</p> <p>23 Q. You can answer, Ms. Trujillo.</p> <p>24 A. I can't answer that question.</p> <p>25 Q. Is it because it call- -- you believe that 11:48:59</p> <p style="text-align: right;">Page 90</p>	<p>1 MS. BAEZA: Objection. Form. Asked and</p> <p>2 answered.</p> <p>3 BY MS. CRAWFORD:</p> <p>4 Q. You can answer.</p> <p>5 A. I can't give you an answer about 11:50:54</p> <p>6 statistics, but the article did state that</p> <p>7 attorneys and experts have found to be true that</p> <p>8 Google is tracking and collecting information</p> <p>9 while users are in incognito mode.</p> <p>10 Q. And the article represented that that was 11:51:27</p> <p>11 done without user consent?</p> <p>12 A. Yes.</p> <p>13 Q. And the lawyers that you just mentioned,</p> <p>14 the article did state -- I'm quoting from your</p> <p>15 testimony now. "The article did state that 11:51:47</p> <p>16 attorneys and experts have found to be true that</p> <p>17 Google is tracking and collecting information."</p> <p>18 Which lawyers are you referring to when</p> <p>19 you say that?</p> <p>20 A. The lawyers at the firm I contacted. 11:52:00</p> <p>21 Q. Okay. So that would be counsel</p> <p>22 representing you in this case? Yes?</p> <p>23 A. Yes. Correct.</p> <p>24 Q. You're aware that there was a com- --</p> <p>25 MR. MAO: Hey, Jomaire. This is --</p> <p style="text-align: right;">Page 92</p>
<p>1 it calls for privileged information?</p> <p>2 A. Yes.</p> <p>3 Q. So then, is it the case that your basis</p> <p>4 for believing that it was a known fact that Google</p> <p>5 is collecting this data, does it derive from 11:49:15</p> <p>6 information that you've obtained from lawyers that</p> <p>7 you've hired in this case, yes or no?</p> <p>8 MS. BAEZA: Objection to form.</p> <p>9 Mischaracterizes testimony.</p> <p>10 She -- she said it came from an article. 11:49:28</p> <p>11 BY MS. CRAWFORD:</p> <p>12 Q. Can you please clarify, Ms. Trujillo?</p> <p>13 A. I was initially informed of this from the</p> <p>14 article I read.</p> <p>15 Q. And what did the article say specifically 11:49:50</p> <p>16 about Google's data collection without user</p> <p>17 consent?</p> <p>18 A. It specifically said that Google is</p> <p>19 tracking information while on incognito mode.</p> <p>20 Q. And did they cite -- did the article cite 11:50:11</p> <p>21 any evidence or support or offer facts to</p> <p>22 support -- to justify that assertion, yes or no?</p> <p>23 A. Yes.</p> <p>24 Q. What were those facts or supporting</p> <p>25 justifications? 11:50:40</p> <p style="text-align: right;">Page 91</p>	<p>1 Jomaire. Jomaire, this is Mark. This is Mark</p> <p>2 Mao.</p> <p>3 MS. CRAWFORD: Yes?</p> <p>4 MR. MAO: Just real quick. Just for the</p> <p>5 record -- and I'll put it on the record. Okay? 11:52:30</p> <p>6 MS. CRAWFORD: Sure.</p> <p>7 MR. MAO: Because Rosy was not involved in</p> <p>8 the case at the beginning of the case. There is no</p> <p>9 solicitation, like, article, that the firm's put</p> <p>10 out there. If that's what, like, this is all 11:52:40</p> <p>11 about, although she's answered this, like --</p> <p>12 (Interruption in audio/video.)</p> <p>13 -- times.</p> <p>14 And I will make the representation to you</p> <p>15 that the lawyers did not send out a solicitation, 11:52:45</p> <p>16 like publishing anywhere that has not been produced</p> <p>17 in the case. I -- and -- and there is none.</p> <p>18 That's why. Okay? So I've been --</p> <p>19 MS. CRAWFORD: Yeah, but you were --</p> <p>20 MR. MAO: -- listening to this for a 11:52:57</p> <p>21 while --</p> <p>22 MS. CRAWFORD: Mm-hmm. I appreciate</p> <p>23 your --</p> <p>24 MR. MAO: -- right?</p> <p>25 MS. CRAWFORD: -- attentiveness, so</p> <p style="text-align: right;">Page 93</p>

<p>1 Q. You can answer.</p> <p>2 A. Yes, I do.</p> <p>3 Q. And that's -- what evidence is that?</p> <p>4 MS. BAEZA: Objection. One moment.</p> <p>5 Monique, to the extent that this calls for 12:17:30</p> <p>6 communications between you and counsel, I'm</p> <p>7 instructing you not to answer. But you can answer</p> <p>8 if you -- if you can without revealing those</p> <p>9 communications.</p> <p>10 THE WITNESS: The evidence I have is 12:17:40</p> <p>11 the -- what the -- what my attorneys and what --</p> <p>12 MS. BAEZA: One moment. One moment.</p> <p>13 Don't -- Monique, as -- as -- you can answer the</p> <p>14 question as long as you're not revealing the</p> <p>15 communications that you've had with your attorneys. 12:18:02</p> <p>16 Okay?</p> <p>17 THE WITNESS: Yes.</p> <p>18 MS. BAEZA: Okay. Go ahead.</p> <p>19 THE WITNESS: What the experts have found.</p> <p>20 BY MS. CRAWFORD: 12:18:18</p> <p>21 Q. Okay. Are you aware, Ms. Trujillo, that</p> <p>22 you can opt out of Google's use of certain of your</p> <p>23 data by visiting ad settings, a website on -- that</p> <p>24 Google offers, adsettings.google.com, and turning</p> <p>25 off something that's called ad personalization? 12:18:46</p> <p style="text-align: right;">Page 110</p>	<p>1 Q. Do you have an opinion, one way or the</p> <p>2 other, about the kinds of advertising that you see</p> <p>3 when you visit websites online?</p> <p>4 A. Yes, I have an opinion on the</p> <p>5 advertisements I see. 12:20:40</p> <p>6 Q. And what opinion is that?</p> <p>7 A. It depends on what the advertisement is.</p> <p>8 Q. Can you say a little bit more there? For</p> <p>9 example, is it, you know, your belief that some</p> <p>10 ads are helpful or useful, other ads maybe less 12:20:58</p> <p>11 so?</p> <p>12 A. Yes, that's how I feel about it. I mean,</p> <p>13 some ads are helpful, useful. Some ads are</p> <p>14 just -- some are helpful and useful.</p> <p>15 Q. Can you give me an example of one ad, you 12:21:38</p> <p>16 know, over the years, perhaps, or recently that</p> <p>17 you encountered online that you did consider to be</p> <p>18 helpful or useful?</p> <p>19 A. Let's see.</p> <p>20 Around the holidays when I get a -- an 12:22:16</p> <p>21 advertisement for a store and there's a coupon,</p> <p>22 that's helpful and useful.</p> <p>23 Q. And by getting an advertisement for a</p> <p>24 coupon, you mean like you may be visiting a</p> <p>25 website, let's say williams-sonoma.com, and an ad 12:22:38</p> <p style="text-align: right;">Page 112</p>
<p>1 Are you aware of that?</p> <p>2 A. No, I'm not.</p> <p>3 Q. I think I -- I -- I asked earlier if you</p> <p>4 had done any research online about protecting your</p> <p>5 privacy, and I think that you said you had not. 12:19:01</p> <p>6 But if you uncovered information like what</p> <p>7 I'm describing to you now, "my activity" and the</p> <p>8 ads personalization feature that I mentioned you</p> <p>9 could disable, is that something that at the very</p> <p>10 least you would be interested in learning more 12:19:17</p> <p>11 about?</p> <p>12 A. Yes, it's something I would look into.</p> <p>13 Q. All right.</p> <p>14 Do you have any understanding of what a</p> <p>15 VPN or a proxy server is? 12:19:37</p> <p>16 A. No, I do not.</p> <p>17 Q. Okay. So to your knowledge, you've --</p> <p>18 have you -- you've never used a VPN or a proxy</p> <p>19 server on any browser?</p> <p>20 A. To my knowledge, I have not. 12:19:49</p> <p>21 Q. What about a firewall?</p> <p>22 A. I have not used a firewall.</p> <p>23 Q. What about something called "AdGuard" or</p> <p>24 "AdLock," which are ad blocker programs?</p> <p>25 A. I have not. 12:20:19</p> <p style="text-align: right;">Page 111</p>	<p>1 pops up informing you that a retailer is offering</p> <p>2 a discount or a coupon? Is that the context that</p> <p>3 you're describing generally?</p> <p>4 A. If it's a store that I like, then it is</p> <p>5 helpful and useful. 12:22:57</p> <p>6 Q. Okay. Can you give me a couple examples</p> <p>7 of -- of sites or stores, where getting an ad from</p> <p>8 them might be more helpful or useful than not?</p> <p>9 Would you say Williams-Sonoma is one such store,</p> <p>10 for example? 12:23:14</p> <p>11 A. Yes, getting an ad from Williams-Sonoma</p> <p>12 would be helpful and useful.</p> <p>13 Q. Any other stores that you can think of,</p> <p>14 websites that you might visit online?</p> <p>15 A. Do you just want me to list off which 12:23:30</p> <p>16 stores I would like to get advertisements from?</p> <p>17 Q. You can. Yeah, just, again, I'm not</p> <p>18 looking for an exhaustive list because this is</p> <p>19 certainly not a memory test.</p> <p>20 Any examples that immediately come to 12:23:57</p> <p>21 mind?</p> <p>22 A. I would say Macy's, Target.</p> <p>23 Q. And do you recall whether you've ever seen</p> <p>24 any ads for Macy's or Target while you were</p> <p>25 browsing online? 12:24:29</p> <p style="text-align: right;">Page 113</p>

<p>1 A. Yes, I have seen ads for Macy's and</p> <p>2 Target.</p> <p>3 Q. Have you ever clicked on those ads?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. I want to ask a couple questions 12:24:38</p> <p>6 now about your use of the Chrome browser, which,</p> <p>7 as you know, is at the heart of this lawsuit.</p> <p>8 To the best of your recollection,</p> <p>9 Ms. Trujillo, when did you first start using</p> <p>10 Chrome? 12:24:58</p> <p>11 A. I would say around 2008.</p> <p>12 Q. What did you like about Chrome when you</p> <p>13 started using it in 2008?</p> <p>14 A. The Google search engine.</p> <p>15 Q. Okay. Anything else? 12:25:26</p> <p>16 A. I preferred Chrome over the browser I had</p> <p>17 at the time in 2008, which I think was -- I can't</p> <p>18 recall what -- I can't recall the other browser,</p> <p>19 but I -- I did -- when I discovered Chrome, I did</p> <p>20 prefer it. 12:26:11</p> <p>21 Q. Does Safari jog your memory any? You</p> <p>22 might have --</p> <p>23 A. No, it's not Safari.</p> <p>24 Q. You might have submitted dis- -- it's not</p> <p>25 Safari. Okay. 12:26:18</p> <p style="text-align: right;">Page 114</p>	<p>1 A. Yes.</p> <p>2 Q. Tried it out for a bit?</p> <p>3 A. Yes.</p> <p>4 Q. Safe to say you enjoyed the experience?</p> <p>5 A. Yes. And I found over time that some -- 12:27:34</p> <p>6 in the workplace, I had to have -- or they were</p> <p>7 using primarily Chrome.</p> <p>8 Q. Okay. So was that beneficial to you, in</p> <p>9 any way?</p> <p>10 A. Yes, it was beneficial because I could 12:27:59</p> <p>11 access the different services.</p> <p>12 Q. And what services do you have in mind or</p> <p>13 were you using back then?</p> <p>14 A. Being able to browse the web at a decent</p> <p>15 pace or a decent speed. 12:28:30</p> <p>16 Q. Okay. Anything else beyond using the</p> <p>17 Chrome browser in terms of the Google services</p> <p>18 that you just mentioned?</p> <p>19 A. Anything else such as?</p> <p>20 Q. You mentioned that it was beneficial 12:28:55</p> <p>21 because you could access the different services.</p> <p>22 A. Mm-hmm.</p> <p>23 Q. So I'm wondering, besides using Chrome to</p> <p>24 browse the web, were there any other Google</p> <p>25 services that you had in mind? 12:29:05</p> <p style="text-align: right;">Page 116</p>
<p>1 I was going to say you might have</p> <p>2 submitted discovery responses in this case where</p> <p>3 you listed Safari as another browser that you've</p> <p>4 used, so I just thought I'd mention that.</p> <p>5 But it wasn't Safari that you were using 12:26:29</p> <p>6 prior to 2008?</p> <p>7 A. I've used Safari, but in 2008 I can't</p> <p>8 recall what I was using.</p> <p>9 Q. Okay.</p> <p>10 A. It just -- 12:26:38</p> <p>11 Q. And --</p> <p>12 A. Chrome was --</p> <p>13 Q. I'm sorry. Go ahead.</p> <p>14 A. Chrome was new to me, and I liked it.</p> <p>15 Q. And I think you mentioned having 12:26:45</p> <p>16 discovered Chrome. Can you tell me how you</p> <p>17 discovered the browser?</p> <p>18 A. I don't know who it was. It was a -- a</p> <p>19 friend or a loved one said, "Why are you using</p> <p>20 that browser? You should" -- it was -- it was 12:27:08</p> <p>21 suggested to me.</p> <p>22 Q. Okay. Someone suggested that you switch</p> <p>23 from the browser you were using prior to 2008 or</p> <p>24 into -- up to 2008 on to Chrome. And safe to say</p> <p>25 you did that? 12:27:25</p> <p style="text-align: right;">Page 115</p>	<p>1 A. Gmail.</p> <p>2 Q. Okay. Anything else? It's okay if -- if</p> <p>3 you -- if you don't have anything. Again, it's</p> <p>4 not designed to be a memory test. If you happen</p> <p>5 to know. 12:29:32</p> <p>6 A. Gmail, Google search.</p> <p>7 Q. Okay. So you used Chrome in 2008. You</p> <p>8 used it in the years that followed as well; is</p> <p>9 that -- is that right?</p> <p>10 A. Yes. 12:29:51</p> <p>11 Q. Okay. Do you still use Chrome to this</p> <p>12 day?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. How often would you say that you</p> <p>15 use Chrome this year, in 2022? Do you use it 12:30:01</p> <p>16 every day, a couple times per week, or on some</p> <p>17 other cadence?</p> <p>18 A. On a daily basis.</p> <p>19 Q. Okay. Do you use Chrome in both modes,</p> <p>20 incognito and a non-incognito mode daily? 12:30:22</p> <p>21 A. It depends on what I'm looking at or what</p> <p>22 I'm visiting. I'll use incognito if I want it to</p> <p>23 be private. And that varies from day-to-day.</p> <p>24 Q. Okay. When did you first start having</p> <p>25 concerns, Ms. Trujillo, about Google's collection 12:30:48</p> <p style="text-align: right;">Page 117</p>

<p>1 about your data?</p> <p>2 A. I would say six or seven years ago when I</p> <p>3 started using incognito, I started noticing</p> <p>4 things. And when I read the article about Google</p> <p>5 tracking information while I'm in incognito mode, 12:31:36</p> <p>6 it really resonated with me because it angered me</p> <p>7 that this was affecting my privacy and my</p> <p>8 browsing.</p> <p>9 Q. Okay. And you started using Chrome in</p> <p>10 2008. When did you start using incognito mode for 12:31:58</p> <p>11 Chrome?</p> <p>12 A. About 2015, 2016 -- 2016.</p> <p>13 Q. Any reason why you weren't using incognito</p> <p>14 mode to safeguard your privacy online before 2015?</p> <p>15 A. It was 2016. And I hadn't known about 12:32:21</p> <p>16 incognito mode before then.</p> <p>17 Q. So from 2008 to 2016, that eight-year --</p> <p>18 entire eight-year period where you were using</p> <p>19 Chrome, you were not aware that there was a</p> <p>20 feature in the browser called "incognito mode"? 12:32:42</p> <p>21 A. That's correct, I was not aware.</p> <p>22 Q. Okay. And is it your testimony that at no</p> <p>23 point prior to 2016 did you review -- sorry, did</p> <p>24 you use Chrome in incognito mode?</p> <p>25 A. That's correct. Before that time, I had 12:33:02</p> <p style="text-align: right;">Page 118</p>	<p>1 A. I do believe it was Internet Explorer that</p> <p>2 I was using.</p> <p>3 Q. Okay. Did you review any documents or</p> <p>4 information online at or around the time you</p> <p>5 switched from Internet Explorer to Chrome? 12:34:54</p> <p>6 MS. BAEZA: Objection. Form. Vague.</p> <p>7 THE WITNESS: Did I review any documents?</p> <p>8 Such as?</p> <p>9 BY MS. CRAWFORD:</p> <p>10 Q. Like any information online about Chrome, 12:35:14</p> <p>11 for example, before switching over to it from</p> <p>12 Internet Explorer.</p> <p>13 A. No, I did not.</p> <p>14 Q. Okay. What type of devices have you used</p> <p>15 Chrome on in the past? I think you mentioned 12:35:30</p> <p>16 having a mobile phone; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have any other types of devices?</p> <p>19 A. Yes. I've used Chrome on desktops,</p> <p>20 laptops, and mobile phones. 12:35:50</p> <p>21 Q. Okay. So the desktop computer that you</p> <p>22 mentioned, would that be a work PC or a Mac?</p> <p>23 A. Work PC.</p> <p>24 Q. Okay. Do you also have a home computer?</p> <p>25 A. Yes. 12:36:10</p> <p style="text-align: right;">Page 120</p>
<p>1 not used incognito mode because I did not know</p> <p>2 about incognito mode.</p> <p>3 Q. Okay. And when you first started using</p> <p>4 incognito mode in 2016, did you trust the browser</p> <p>5 with your personal data? 12:33:20</p> <p>6 A. Yes.</p> <p>7 Q. Why is that?</p> <p>8 A. Because the privacy policy said that I was</p> <p>9 in control and that when I was in incognito mode</p> <p>10 that my information would not be collected. 12:33:41</p> <p>11 Q. Okay. And -- and, again, we're going to</p> <p>12 get to the privacy policy and incognito -- the</p> <p>13 incognito screen in a minute. And I'm going to</p> <p>14 ask that when we talk through that disclosure, you</p> <p>15 show me where in there it contains that specific 12:33:59</p> <p>16 representation.</p> <p>17 But until then, let me ask just a couple</p> <p>18 more questions about your browsing history.</p> <p>19 You mentioned using Safari and Chrome.</p> <p>20 Are you aware of any other browsers you've used 12:34:19</p> <p>21 within the past decade? Would Internet Explorer,</p> <p>22 for example, be a browser you might have used?</p> <p>23 A. Internet Explorer, yes.</p> <p>24 Q. Was that the one you were using back in</p> <p>25 2008? 12:34:42</p> <p style="text-align: right;">Page 119</p>	<p>1 Q. Is that a PC or a Mac?</p> <p>2 A. My home computer now is my laptop; it's a</p> <p>3 Mac. And I have also a laptop PC. And I do not</p> <p>4 currently have a desktop.</p> <p>5 Q. Okay. Do you share any of those devices 12:36:42</p> <p>6 you just mentioned with other people?</p> <p>7 A. Yes, I do, all three.</p> <p>8 Q. Okay. You mentioned a work computer and</p> <p>9 two laptops.</p> <p>10 Are those the three devices that you share 12:37:02</p> <p>11 with other users?</p> <p>12 A. It's work computer, one -- one PC that's</p> <p>13 used often, another PC that's used not as often,</p> <p>14 and my mobile phone.</p> <p>15 Q. Okay. And those are the three devices 12:37:34</p> <p>16 that you share with other users?</p> <p>17 A. Those are the devices I share.</p> <p>18 Q. Okay. How many other people use each of</p> <p>19 those devices, starting with your work computer?</p> <p>20 A. My work computer is -- it's just me; but, 12:37:58</p> <p>21 you know, maybe sometimes I'll let somebody, if</p> <p>22 they need to look something up or -- use my</p> <p>23 computer. They -- you know, just something quick.</p> <p>24 The other devices, just whenever. I mean,</p> <p>25 they're just shared. My mobile phone is -- say if 12:38:34</p> <p style="text-align: right;">Page 121</p>

<p>1 JURAT</p> <p>2</p> <p>3 I, MONIQUE TRUJILLO, do hereby certify</p> <p>4 under penalty of perjury that I have read the</p> <p>5 foregoing transcript of my deposition taken</p> <p>6 remotely on the 11th day of February, 2022; that I</p> <p>7 have made such corrections as appear noted herein</p> <p>8 in ink, initialed by me; that my testimony as</p> <p>9 contained herein, as corrected, is true and</p> <p>10 correct.</p> <p>11</p> <p>12 Dated this ____ day of _____, 2022,</p> <p>13 at _____.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 _____</p> <p>20 MONIQUE TRUJILLO</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 294</p>	<p>1 JOMAIRE CRAWFORD, ESQ.</p> <p>2 jomairecrawford@quinnemanuel.com</p> <p>3 FEBRUARY 16, 2022</p> <p>4 RE: BROWN V. GOOGLE LLC</p> <p>5 FEBRUARY 11, 2022, MONIQUE TRUJILLO, JOB NO. 5077549</p> <p>6 The above-referenced transcript has been</p> <p>7 completed by Veritext Legal Solutions and</p> <p>8 review of the transcript is being handled as follows:</p> <p>9 __ Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext</p> <p>10 to schedule a time to review the original transcript at</p> <p>11 a Veritext office.</p> <p>12 __ Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF</p> <p>13 Transcript - The witness should review the transcript and</p> <p>14 make any necessary corrections on the errata pages included</p> <p>15 below, notating the page and line number of the corrections.</p> <p>16 The witness should then sign and date the errata and penalty</p> <p>17 of perjury pages and return the completed pages to all</p> <p>18 appearing counsel within the period of time determined at</p> <p>19 the deposition or provided by the Code of Civil Procedure.</p> <p>20 __ Waiving the CA Code of Civil Procedure per Stipulation of</p> <p>21 Counsel - Original transcript to be released for signature</p> <p>22 as determined at the deposition.</p> <p>23 __ Signature Waived – Reading & Signature was waived at the</p> <p>24 time of the deposition.</p> <p>25</p> <p style="text-align: right;">Page 296</p>
<p>1 CERTIFICATE OF REPORTER</p> <p>2 I, Hanna Kim, a Certified Shorthand</p> <p>3 Reporter, do hereby certify:</p> <p>4 That prior to being examined, the witness</p> <p>5 in the foregoing proceedings was by me duly sworn</p> <p>6 to testify to the truth, the whole truth, and</p> <p>7 nothing but the truth;</p> <p>8 That said proceedings were taken before me</p> <p>9 at the time and place therein set forth and were</p> <p>10 taken down by me in shorthand and thereafter</p> <p>11 transcribed into typewriting under my direction and</p> <p>12 supervision;</p> <p>13 I further certify that I am neither</p> <p>14 counsel for, nor related to, any party to said</p> <p>15 proceedings, not in anywise interested in the</p> <p>16 outcome thereof.</p> <p>17 Further, that if the foregoing pertains to</p> <p>18 the original transcript of a deposition in a</p> <p>19 federal case. before completion of the proceedings,</p> <p>20 review _____] was not</p> <p>21 request _____</p> <p>22 I _____ hereunto</p> <p>23 subscr _____</p> <p>24 I _____ JARY, 2022</p> <p>25</p> <p style="text-align: right;">Page 295</p>	<p>1 __ Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF</p> <p>2 Transcript - The witness should review the transcript and</p> <p>3 make any necessary corrections on the errata pages included</p> <p>4 below, notating the page and line number of the corrections.</p> <p>5 The witness should then sign and date the errata and penalty</p> <p>6 of perjury pages and return the completed pages to all</p> <p>7 appearing counsel within the period of time determined at</p> <p>8 the deposition or provided by the Federal Rules.</p> <p>9 _x_ Federal R&S Not Requested - Reading & Signature was not</p> <p>10 requested before the completion of the deposition.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 297</p>

EXHIBIT 30

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3

4 CHASOM BROWN, WILLIAM BYATT,
5 JEREMY DAVIS, CHRISTOPHER
6 CASTILLO, and MONIQUE
7 TRUJILLO individually and on
8 behalf of all other similarly No.
9 situated, 4:20-cv-03664-YGR-SVK

10 Plaintiffs,

11 vs.

12 GOOGLE LLC,

13 Defendant.
14 _____/

15 VIDEO-RECORDED DEPOSITION OF DAVID NELSON

16 REMOTE ZOOM PROCEEDING

17 Tampa, Florida

18 Wednesday, July 6, 2022
19
20
21
22

23 REPORTED BY:

24 LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

25 Pages 1 - 126

Job No. 5302302

Page 1

<p>1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF CALIFORNIA 3 4 CHASOM BROWN, WILLIAM BYATT, 5 JEREMY DAVIS, CHRISTOPHER 6 CASTILLO, and MONIQUE 7 TRUJILLO individually and on 8 behalf of all other similarly No. 9 situated, 4:20-cv-03664-YGR-SVK 10 11 Plaintiffs, 12 13 vs. 14 15 GOOGLE LLC, 16 17 Defendant. 18 19 _____/ 20 21 Video-recorded deposition of DAVID NELSON, taken 22 on behalf of the Defendant, Remote Zoom Proceeding from 23 Tampa, Florida, beginning at 12:04 p.m. Eastern Daylight 24 Time and ending at 3:50 p.m. Eastern Daylight Time, on 25 Wednesday, July 6, 2022, before Leslie Rockwood Rosas, RPR, CSR No. 3462.</p>	<p>1 APPEARANCES (Continued): 2 3 BOIES SCHILLER FLEXNER LLP 4 BY: ALISON L. ANDERSON, ESQ. 5 725 South Figueroa Street, 31st Floor 6 Los Angeles, California 90017 7 (213) 995-5720 8 alanderson@bsflp.com 9 10 FOR THE DEFENDANT: 11 QUINN EMANUEL URQUHART & SULLIVAN, LLP 12 BY: CARL W. SPILLY, ESQ. 13 1300 I Street NW, Suite 900 14 Washington, D.C. 20005 15 (202) 538-8000 16 carlspilly@quinnemanuel.com 17 18 BY: STEPHEN A. BROOME, ESQ. 19 865 South Figueroa Street, 10th Floor 20 Los Angeles, California 90017 21 (213) 443-3000 22 stephenbroome@quinnemanuel.com 23 24 25</p>
Page 2	Page 4
<p>1 APPEARANCES: 2 3 FOR THE PLAINTIFFS: 4 MORGAN & MORGAN 5 BY: RYAN MCGEE, ESQ. 6 JOHN YANCHUNIS, ESQ. 7 201 North Franklin Street, 7th Floor 8 Tampa, Florida 33602 9 (813) 223-5505 10 rmcgee@forthepeople.com 11 jyanchunis@forthepeople.com 12 13 BOIES SCHILLER FLEXNER LLP 14 BY: HSIAO (MARK) C. MAO, ESQ. 15 44 Montgomery Street, 41st Floor 16 San Francisco, California 91401 17 (415) 293-6800 18 mmao@bsflp.com 19 20 BY: JAMES LEE, ESQ. 21 100 SE Second Street, Suite 2800 22 Miami, Florida 33131 23 (305) 539-8400 24 jlee@bsflp.com 25</p>	<p>1 APPEARANCES (Continued): 2 3 Also Present: 4 Liam Timmons, Summer Associate, Quinn Emanuel 5 Urquhart & Sullivan, LLP 6 Robert Fenton, Videographer 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 3	Page 5

<p>1 might be an indicator for; is that correct?</p> <p>2 MR. MCGEE: Object to the form.</p> <p>3 You can answer.</p> <p>4 THE WITNESS: I don't. I suspect that there is</p> <p>5 a way to tell but Google never shared that with us. 13:26:03</p> <p>6 Q. BY MR. SPILLY: Okay. So other than a witness</p> <p>7 telling you in an interview that they were using private</p> <p>8 browsing mode on their browser, you have no way of</p> <p>9 knowing for certain whether information produced by</p> <p>10 Google was private browsing information; is that correct? 13:26:30</p> <p>11 MR. MCGEE: Object to the form.</p> <p>12 You can answer, Mr. Nelson.</p> <p>13 THE WITNESS: So no personal knowledge, but I --</p> <p>14 I would say in Professor Zervas' own report, and I can</p> <p>15 give you the paragraph number if needed, he discusses 13:26:47</p> <p>16 that in Incognito mode, it does not prevent a website</p> <p>17 such as Google from knowing the IP address and following</p> <p>18 all the locations within that website. In</p> <p>19 Professor Zervas' own report.</p> <p>20 Q. BY MR. SPILLY: Okay. When witnesses told you 13:27:14</p> <p>21 they were using private browsing mode, did you ever</p> <p>22 confirm those witnesses' statements?</p> <p>23 A. No, sir. I don't know that there would have</p> <p>24 been a way to do so.</p> <p>25 Q. Okay. So the only basis for your opinion that 13:27:28</p> <p style="text-align: right;">Page 58</p>	<p>1 Q. And when witnesses told you they were in private</p> <p>2 browsing mode on their browser, how did that come up in</p> <p>3 the context of these interviews?</p> <p>4 A. They volunteered the information, sir. All</p> <p>5 three of them. 13:29:25</p> <p>6 Q. Okay. And what did they say?</p> <p>7 A. All three of them were slightly different, but</p> <p>8 all three of them were along the lines of: "I'm</p> <p>9 surprised you have that information because I was in</p> <p>10 private browsing mode and I thought it was secret." 13:29:41</p> <p>11 Q. Okay. In the information that was produced</p> <p>12 related to those three interviewees, was the Google</p> <p>13 account field that you mentioned earlier absent?</p> <p>14 A. I don't know, sir.</p> <p>15 Q. Okay. But you didn't look at the information 13:30:05</p> <p>16 produced by Google to confirm these witnesses'</p> <p>17 statements; is that correct?</p> <p>18 A. So that was not an important thing at the time</p> <p>19 of these cases, sir.</p> <p>20 Q. Okay. And the answer, then, to my question is 13:30:20</p> <p>21 "yes"?</p> <p>22 A. You'll have to rephrase -- you'll have to</p> <p>23 restate the question, sir.</p> <p>24 Q. Okay. You didn't look at the information</p> <p>25 produced by Google to confirm the three witnesses' 13:30:34</p> <p style="text-align: right;">Page 60</p>
<p>1 information produced by Google came from users using a</p> <p>2 browser in private browsing mode is because the suspects</p> <p>3 told you they were using private browsing mode on their</p> <p>4 browser; is that correct?</p> <p>5 A. And the previously described spreadsheets with 13:27:51</p> <p>6 the lack of the Google user identifier.</p> <p>7 Q. How many suspects said that they were using</p> <p>8 private browsing mode in these interviews?</p> <p>9 A. At least three, sir. I don't recall how many</p> <p>10 exactly, but at least three that I can remember. 13:28:18</p> <p>11 Q. How many of these interviews did you conduct</p> <p>12 during your time with the FBI?</p> <p>13 A. I don't understand the question, sir.</p> <p>14 Q. How many interviews of targets or subjects of</p> <p>15 FBI cyber crime investigations did you interview during 13:28:35</p> <p>16 your time at the FBI?</p> <p>17 A. I don't have that number. Quite a few.</p> <p>18 Q. Okay. Is it fair to say that it was more than a</p> <p>19 hundred?</p> <p>20 A. Probably, sir. 13:28:52</p> <p>21 Q. Okay. More than 200?</p> <p>22 A. No, sir.</p> <p>23 Q. Okay. So somewhere in the range of 100 to 200</p> <p>24 interviews; is that correct?</p> <p>25 A. Subject interviews, yes, sir. 13:29:04</p> <p style="text-align: right;">Page 59</p>	<p>1 statements about private browsing mode that are</p> <p>2 referenced in paragraph 37 of Exhibit 1; is that correct?</p> <p>3 A. That's correct, I had no reason to, sir. I had</p> <p>4 no reason to doubt that they were in private browsing</p> <p>5 mode. 13:30:52</p> <p>6 Q. Okay. Which browsers were those witnesses</p> <p>7 using?</p> <p>8 A. I don't have that information, sir.</p> <p>9 Q. Okay. Were those users signed into a Google</p> <p>10 account when they were browsing in private browsing mode? 13:31:10</p> <p>11 MR. MCGEE: Object to the form.</p> <p>12 THE WITNESS: I don't have that information,</p> <p>13 sir.</p> <p>14 Q. BY MR. SPILLY: Okay. Were those -- were those</p> <p>15 users signed out of a Google account when they were 13:31:21</p> <p>16 browsing in private browsing mode?</p> <p>17 MR. MCGEE: Object to the form.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: I'm pretty sure that's the same</p> <p>20 question. But I don't know, sir. 13:31:31</p> <p>21 Q. BY MR. SPILLY: It was slightly different. It's</p> <p>22 the inverse, signed into versus signed out of.</p> <p>23 All right. So staying with Exhibit 1, if you go</p> <p>24 to paragraph 25.</p> <p>25 Let me know when you're there. 13:32:02</p> <p style="text-align: right;">Page 61</p>

<p>1 A. Yes, sir, I'm there.</p> <p>2 Q. So it says -- paragraph 25 of Exhibit 1 says,</p> <p>3 "During my approximate 18 years performing cyber crime</p> <p>4 investigations with the FBI, I routinely submitted</p> <p>5 administrative subpoenas to Google relying on IP 13:32:22</p> <p>6 addresses (along with the approximate date range or (sic)</p> <p>7 the suspected activity) of subjects suspected of criminal</p> <p>8 activity."</p> <p>9 Did I read that correctly?</p> <p>10 A. Not quite, but that's the gist of it, sir. 13:32:36</p> <p>11 Q. Sorry.</p> <p>12 So what do -- in paragraph 25 of Exhibit 1, what</p> <p>13 do you mean by "relying on IP addresses"?</p> <p>14 A. Meaning I submitted a request to Google with an</p> <p>15 IP address and a date and time range and requested 13:32:57</p> <p>16 information.</p> <p>17 Q. Okay. And then it says -- the second sentence</p> <p>18 of paragraph 25 of Exhibit 1 says, "Without a court</p> <p>19 order, Google regularly produced responsive information</p> <p>20 associated with the submitted IP address." 13:33:14</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Okay. What do you mean by "responsive</p> <p>24 information" in this paragraph?</p> <p>25 A. They provided information related to the IP 13:33:26</p> <p style="text-align: right;">Page 62</p>	<p>1 A. So it would be -- it usually would start with a</p> <p>2 Google search, and then we would see results from the</p> <p>3 Google search.</p> <p>4 And then typically we would see if they went to</p> <p>5 one of those results from their search. We would see 13:35:44</p> <p>6 that in the spreadsheet.</p> <p>7 But further than that, if they went, say, to</p> <p>8 another page in the website, we wouldn't see that</p> <p>9 additional information.</p> <p>10 Q. Okay. So the information -- so the responsive 13:36:03</p> <p>11 information referenced in paragraph 25 of Exhibit 1 means</p> <p>12 activity on Google websites; is that correct?</p> <p>13 A. Starting on Google websites is one of the pieces</p> <p>14 of responsive information they provided.</p> <p>15 Q. Okay. And what's the other piece? 13:36:26</p> <p>16 A. User information is -- is previously entered.</p> <p>17 User information: Name, maybe address. We would ask</p> <p>18 for, essentially, any and all account information related</p> <p>19 to the IP address.</p> <p>20 Q. Okay. And by "account information" you mean you 13:36:44</p> <p>21 would ask for Google account information; is that</p> <p>22 correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. And then -- all right. How many of these</p> <p>25 administrative subpoenas did you personally submit? 13:37:08</p> <p style="text-align: right;">Page 64</p>
<p>1 address in question.</p> <p>2 Q. Okay. And that information would contain search</p> <p>3 activity; is that correct?</p> <p>4 A. It could, yes. It could -- subscriber</p> <p>5 information if it was a paid account. Maybe billing 13:33:43</p> <p>6 information. Name, although that's not necessarily</p> <p>7 verifiable information. But search terms, yes.</p> <p>8 Q. Okay. And would Gmail be another example of the</p> <p>9 type of information that might be provided in response to</p> <p>10 an administrative subpoena, as referenced in paragraph 25 13:34:11</p> <p>11 of Exhibit 1?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. And I heard you say if it was a paid</p> <p>14 account there may be billing information; is that right?</p> <p>15 A. Yes, sir. 13:34:28</p> <p>16 Q. What do you mean by "paid account"?</p> <p>17 A. If they were hosting a domain or had a Google</p> <p>18 drive space that they were paying for and they had a</p> <p>19 credit card on file with their account, we might get that</p> <p>20 information as well. 13:34:50</p> <p>21 Q. Okay. And did that include browsing activity?</p> <p>22 A. Not complete browsing activity. Limited</p> <p>23 browsing activity is the way I would characterize it.</p> <p>24 Q. Okay. What is the difference between complete</p> <p>25 and limited? 13:35:25</p> <p style="text-align: right;">Page 63</p>	<p>1 A. I don't have a number, sir. I don't know.</p> <p>2 Quite a few.</p> <p>3 Q. Would you have used your own name to submit an</p> <p>4 administrative subpoena to Google?</p> <p>5 A. It was signed by an FBI supervisor, so unlikely 13:37:30</p> <p>6 that my name would be on it. There was a time when I was</p> <p>7 the acting supervisor, and I may have signed them as the</p> <p>8 acting supervisor. But typically it would be the</p> <p>9 supervisor's name for an administrative subpoena, not my</p> <p>10 name. 13:37:49</p> <p>11 Q. Okay. And when you submitted these requests to</p> <p>12 Google along with an IP address, you also submitted</p> <p>13 information regarding the approximate dates of the</p> <p>14 suspected criminal activity; is that correct?</p> <p>15 A. Yes, sir. 13:38:09</p> <p>16 Q. Okay. So at the time that you submitted</p> <p>17 information to Google for one of these administrative</p> <p>18 subpoenas, is it fair to say that you had already begun</p> <p>19 investigating suspected illegal activity associated with</p> <p>20 the IP address? 13:38:26</p> <p>21 A. Many times the subpoena to Google for an IP</p> <p>22 address may have been the first investigative activity</p> <p>23 after we received either a complaint or information</p> <p>24 regarding criminal activity.</p> <p>25 Q. Okay. Are you aware that a Google accountholder 13:38:55</p> <p style="text-align: right;">Page 65</p>

<p>1 MR. MCGEE: Object to the form.</p> <p>2 You can answer.</p> <p>3 THE WITNESS: I think it's more -- more than a</p> <p>4 speculation. I believe that in this process, I learned</p> <p>5 that bit of information. I don't recall exactly where it 15:01:19</p> <p>6 came from, but I believe it's more than just speculation.</p> <p>7 Q. BY MR. SPILLY: Did you learn that from counsel?</p> <p>8 A. I -- I don't know. I just said I don't know</p> <p>9 where I learned it from. But I believe that Google has</p> <p>10 that ability. And it makes sense to me. 15:01:44</p> <p>11 Q. Again, you don't know for sure one way or the</p> <p>12 other?</p> <p>13 A. No, I don't. No, I don't.</p> <p>14 Q. Okay. And you're not offering an expert opinion</p> <p>15 on that; is that correct? 15:01:59</p> <p>16 A. Correct.</p> <p>17 Q. And if Google said that it has no way to</p> <p>18 distinguish between private browsing information on the</p> <p>19 one hand and regular browsing information on the other,</p> <p>20 based on the information that is stored in Google's 15:02:16</p> <p>21 server side logs, you wouldn't have any basis to dispute</p> <p>22 that; is that correct?</p> <p>23 MR. MCGEE: Objection to the form.</p> <p>24 You can answer.</p> <p>25 THE WITNESS: I would have the statements of 15:02:28</p> <p style="text-align: right;">Page 102</p>	<p>1 many people were involved in that investigation. And I</p> <p>2 can clarify, actually.</p> <p>3 How many people were involved in conducting that</p> <p>4 investigation?</p> <p>5 A. So, respectfully, I think that's going to 15:04:40</p> <p>6 potentially identify which investigation this is. And,</p> <p>7 therefore, I don't believe I'm at liberty to answer that</p> <p>8 question, because I believe it could lead to the</p> <p>9 identification of the investigation, which I am not</p> <p>10 permitted to disclose. 15:04:59</p> <p>11 Q. Okay. But there were multiple people involved;</p> <p>12 is that correct?</p> <p>13 A. I'm not saying that. I'm not saying -- I'm not</p> <p>14 answering the question, sir.</p> <p>15 Q. Okay. Trained law enforcement personnel were 15:05:13</p> <p>16 involved in the investigation referenced in paragraph 35</p> <p>17 of Exhibit 1, though; correct?</p> <p>18 A. As with any investigation, yes.</p> <p>19 Q. Okay. And that investigation involved forensic</p> <p>20 analysis of a fake email account to identify IP address, 15:05:31</p> <p>21 and then submit that to Google; is that correct?</p> <p>22 A. When you say "forecast investigation," I mean,</p> <p>23 we read the email headers. So it wasn't like we had to</p> <p>24 use a forensic tool to decipher the headers. It was just</p> <p>25 my expertise being able to decode the headers and know 15:05:55</p> <p style="text-align: right;">Page 104</p>
<p>1 subjects I interviewed who indicated that information was</p> <p>2 done during private browsing mode.</p> <p>3 Q. BY MR. SPILLY: Okay. But you're not offering</p> <p>4 an expert -- you're not opining as an expert that --</p> <p>5 sorry. Strike that. 15:02:59</p> <p>6 Okay. Going back to paragraph 35 of Exhibit 1.</p> <p>7 Let me know when you're back there.</p> <p>8 A. I'm there, sir.</p> <p>9 Q. Okay. So 35 discusses the cyberstalking</p> <p>10 investigation that you participated in; is that correct? 15:03:21</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And the second sentence, it says, "The</p> <p>13 email account" -- "This email account was created with</p> <p>14 false information"; is that correct?</p> <p>15 A. Yes, sir. 15:03:34</p> <p>16 Q. Was the email account that you're referencing in</p> <p>17 this paragraph a Gmail account?</p> <p>18 A. It was, sir.</p> <p>19 Q. Okay. How many people were involved in the</p> <p>20 investigation that you described in paragraph 35 of 15:03:59</p> <p>21 Exhibit 1?</p> <p>22 A. Can you repeat that question, sir?</p> <p>23 Q. Sure.</p> <p>24 So just this investigation in paragraph 35 of</p> <p>25 Exhibit 1 that you're describing, I just want to know how 15:04:22</p> <p style="text-align: right;">Page 103</p>	<p>1 what the originating IP address was. So if you want to</p> <p>2 call that forensic technique, that's fine with me.</p> <p>3 Q. Okay. The fact that you were able to piece</p> <p>4 together the identity of the suspect referenced in</p> <p>5 paragraph 35 of Exhibit 1 does not mean that it's easily 15:06:15</p> <p>6 done by Google; is that correct?</p> <p>7 MR. MCGEE: Object to the form, speculation.</p> <p>8 THE WITNESS: I think it would be very easy</p> <p>9 knowing what I know now on what Google retains. I think</p> <p>10 Google easily could have identified this person and 15:06:34</p> <p>11 probably saved us a whole lot of time in our</p> <p>12 investigation.</p> <p>13 Q. BY MR. SPILLY: All right. And just to</p> <p>14 reiterate, you haven't reviewed any documents produced by</p> <p>15 Google in this case; correct? 15:06:48</p> <p>16 A. Other than the Complaint, no, sir.</p> <p>17 Q. And that is not -- and you understand that the</p> <p>18 doc -- that the Complaint is not a document produced by</p> <p>19 Google; correct?</p> <p>20 A. That is correct, yes. So the answer to the 15:06:58</p> <p>21 question is no, I have not reviewed any Google documents</p> <p>22 for this case, sir.</p> <p>23 Q. Okay. So when you say that -- when you</p> <p>24 reference your understanding of what Google retains, that</p> <p>25 is completely -- that is not based on reviewing any 15:07:14</p> <p style="text-align: right;">Page 105</p>

<p>1 MR. MCGEE: Yeah, sure.</p> <p>2 MR. SPILLY: Okay. Be back in five.</p> <p>3 THE VIDEOGRAPHER: Going off the record at 4 3:41 p.m.</p> <p>5 (Recess.) 15:44:51</p> <p>6 THE VIDEOGRAPHER: We are back on the record at 7 3:46 p.m.</p> <p>8 MR. SPILLY: Okay. Welcome back, Mr. Nelson.</p> <p>9 So I just have some questions about questions 10 your counsel just asked you. 15:46:03</p> <p>11</p> <p>12 FURTHER EXAMINATION</p> <p>13 BY MR. SPILLY:</p> <p>14 Q. So you said a few minutes ago that while you 15 were at the FBI, you came to the conclusion that the 15:46:12</p> <p>16 absence of account information in the Excel spreadsheets 17 produced by Google was an indicator someone was using 18 private browsing mode; is that fair?</p> <p>19 A. That's fair, sir.</p> <p>20 Q. Okay. And you said you came to that conclusion 15:46:32</p> <p>21 based in part on conversations with suspects; is that 22 correct?</p> <p>23 A. That's correct, sir.</p> <p>24 Q. Okay. I believe earlier today you said only 25 three suspects ever told you they were using private 15:46:48</p> <p>Page 118</p>	<p>1 that some -- there are users out there that do not have</p> <p>2 Google accounts; is that correct?</p> <p>3 A. Certainly.</p> <p>4 Q. Okay. And so if Google produced information</p> <p>5 about a user without a Google account, then the Google 15:48:44</p> <p>6 account field in that Excel would also be empty; correct?</p> <p>7 A. I don't know for sure, but that makes sense.</p> <p>8 Q. Well, if Google -- if a user doesn't have a</p> <p>9 Google account, then they won't have any account info; is 10 that correct? 15:49:09</p> <p>11 A. Correct.</p> <p>12 MR. SPILLY: Okay. All right. I believe that</p> <p>13 is it for me.</p> <p>14 MR. MCGEE: I do have one followup, if you'll</p> <p>15 indulge me. I apologize for not asking this. 15:49:19</p> <p>16</p> <p>17 FURTHER EXAMINATION</p> <p>18 BY MR. MCGEE:</p> <p>19 Q. Mr. Nelson, during one of the breaks you were</p> <p>20 asked to look at your records of when you were first 15:49:26</p> <p>21 contacted by David Reign. Do you recall doing that?</p> <p>22 A. I did, yes.</p> <p>23 Q. And what was the date of that contact from</p> <p>24 Mr. Reign?</p> <p>25 A. It was May 5th. 15:49:39</p> <p>Page 120</p>
<p>1 browsing mode in interviews; is that correct?</p> <p>2 A. That's correct. It also is based on other</p> <p>3 agents' experiences.</p> <p>4 Q. Okay. What years did the suspects -- the three</p> <p>5 suspects that you referenced -- sorry. Strike that 15:47:06</p> <p>6 again.</p> <p>7 For the three suspects that volunteered that</p> <p>8 information to you in interviews, what years did those</p> <p>9 interviews take place?</p> <p>10 A. Respectfully, sir, I can't answer questions 15:47:21</p> <p>11 about the cases themselves, and that includes the dates.</p> <p>12 Q. Okay. How would it be relevant to your</p> <p>13 investigation that a subject is using private browsing</p> <p>14 mode?</p> <p>15 A. The only way it would be relevant to my 15:47:44</p> <p>16 investigation is to show that they were trying to hide</p> <p>17 the activity.</p> <p>18 Q. Okay. And so do you view trying to hide</p> <p>19 browsing activity as a reason for suspicion?</p> <p>20 A. By itself not necessarily, but in conjunction 15:48:03</p> <p>21 with other case information, it certainly would be an</p> <p>22 indicator -- if someone's trying to hide their activity,</p> <p>23 that -- that is clearly an indicator important in my</p> <p>24 investigation.</p> <p>25 Q. Okay. And we -- but we also discussed earlier 15:48:28</p> <p>Page 119</p>	<p>1 Q. And did you also look through those records to</p> <p>2 determine the first time that you spoke with counsel at</p> <p>3 Morgan & Morgan?</p> <p>4 A. I did, sir.</p> <p>5 MR. SPILLY: Objection. Leading. 15:49:52</p> <p>6 Q. BY MR. MCGEE: And what date was that?</p> <p>7 A. It was May 9th, sir.</p> <p>8 Q. So when you were earlier testifying to the</p> <p>9 May 29th date, after refreshing your recollection with</p> <p>10 these records, are the May 5th and May 9th dates more 15:50:06</p> <p>11 accurate?</p> <p>12 MR. SPILLY: Objection. Leading and form.</p> <p>13 THE WITNESS: Yes, sir, they are. They're the</p> <p>14 actual dates.</p> <p>15 Q. BY MR. MCGEE: Okay. Thank you. 15:50:20</p> <p>16 MR. MCGEE: That's all I have.</p> <p>17 THE REPORTER: Off the record, Counsel?</p> <p>18 MR. SPILLY: Yeah. That's it for me.</p> <p>19 Thank you, Mr. Nelson.</p> <p>20 THE VIDEOGRAPHER: We are off the record at 15:50:29</p> <p>21 3:50 p.m., and this concludes today's testimony given by</p> <p>22 David Nelson. The total number of media used was one and</p> <p>23 will be retained by Veritext Legal Solutions.</p> <p>24 (Time Noted: 3:50 p.m.)</p> <p>25 --oOo--</p> <p>Page 121</p>


<p>1 I declare under the penalty of perjury under the</p> <p>2 laws of the State of California that the foregoing is</p> <p>3 true and correct.</p> <p>4 Executed on _____, 2022, at</p> <p>5 _____, _____.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 122</p>	<p>1 RYAN MCGEE, ESQ.</p> <p>2 rmcgee@forthepeople.com</p> <p>3 July 11, 2022</p> <p>4 RE: BROWN VS. GOOGLE LLC</p> <p>5 JULY 6, 2022, DAVID NELSON, JOB NO. 5302302</p> <p>6 The above-referenced transcript has been</p> <p>7 completed by Veritext Legal Solutions and</p> <p>8 review of the transcript is being handled as follows:</p> <p>9 ___ Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext</p> <p>10 to schedule a time to review the original transcript at</p> <p>11 a Veritext office.</p> <p>12 ___ Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF</p> <p>13 Transcript - The witness should review the transcript and</p> <p>14 make any necessary corrections on the errata pages included</p> <p>15 below, notating the page and line number of the corrections.</p> <p>16 The witness should then sign and date the errata and penalty</p> <p>17 of perjury pages and return the completed pages to all</p> <p>18 appearing counsel within the period of time determined at</p> <p>19 the deposition or provided by the Code of Civil Procedure.</p> <p>20 ___ Waiving the CA Code of Civil Procedure per Stipulation of</p> <p>21 Counsel - Original transcript to be released for signature</p> <p>22 as determined at the deposition.</p> <p>23 ___ Signature Waived – Reading & Signature was waived at the</p> <p>24 time of the deposition.</p> <p>25</p> <p style="text-align: right;">Page 124</p>
<p>1 STATE OF CALIFORNIA) ss:</p> <p>2 COUNTY OF MARIN)</p> <p>3</p> <p>4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do</p> <p>5 hereby certify:</p> <p>6 That the foregoing deposition testimony was</p> <p>7 taken before me at the time and place therein set forth</p> <p>8 and at which time the witness was administered the oath;</p> <p>9 That testimony of the witness and all objections</p> <p>10 made by counsel at the time of the examination were</p> <p>11 recorded stenographically by me, and were thereafter</p> <p>12 transcribed under my direction and supervision, and that</p> <p>13 the foregoing pages contain a full, true and accurate</p> <p>14 record of all proceedings and testimony to the best of my</p> <p>15 skill and ability.</p> <p>16 I further certify that I am neither counsel for</p> <p>17 any party to said action, nor am I related to any party</p> <p>18 to said action, nor am I in any way interested in the</p> <p>19 outcome thereof.</p> <p>20 IN WITNESS WHEREOF, I have subscribed my name</p> <p>21 this 11th day of July, 2022.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">  LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462 Page 123 </p>	<p>1 _X_Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF</p> <p>2 Transcript - The witness should review the transcript and</p> <p>3 make any necessary corrections on the errata pages included</p> <p>4 below, notating the page and line number of the corrections.</p> <p>5 The witness should then sign and date the errata and penalty</p> <p>6 of perjury pages and return the completed pages to all</p> <p>7 appearing counsel within the period of time determined at</p> <p>8 the deposition or provided by the Federal Rules.</p> <p>9 ___ Federal R&S Not Requested - Reading & Signature was not</p> <p>10 requested before the completion of the deposition.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 125</p>

EXHIBIT 31

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHASOM BROWN, WILLIAM BYATT,) Case No.
JEREMY DAVIS, CHRISTOPHER) 5:20-cv-03664-LHK-
CASTILLO, and MONIQUE TRUJILLO) SVK
individually and on behalf of)
all other similarly situated,)
)
Plaintiffs,)
)
vs.)
)
GOOGLE LLC,)
)
Defendant.)
_____)

VIRTUAL VIDEOCONFERENCE VIDEO-RECORDED
DEPOSITION OF MARK KEEGAN

Friday, July 15, 2022
Remotely Testifying from Rye, New York

Stenographically Reported By:
Hanna Kim, CLR, CSR No. 13083
Job No. 5302317

<p>1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF CALIFORNIA 3 4 CHASOM BROWN, WILLIAM BYATT,) Case No. JEREMY DAVIS, CHRISTOPHER) 5:20-cv-03664-LHK- 5 CASTILLO, and MONIQUE TRUJILLO) SVK individually and on behalf of) 6 all other similarly situated,) 7 Plaintiffs,) 8 vs.) 9 GOOGLE LLC,) 10 Defendant.) 11 _____) 12 13 14 Virtual videoconference video-recorded 15 deposition of MARK KEEGAN, remotely 16 testifying from Rye, New York, taken on 17 behalf of the Defendant, on Friday, 18 July 15, 2022, before Hanna Kim, CLR, 19 Certified Shorthand Reporter, No. 13083. 20 21 22 23 24 25</p>	<p>1 REMOTE APPEARANCES OF COUNSEL: (CONTINUED) 2 3 Also Present: 4 AN TRUONG, ESQ, Simmons Hanly Conroy 5 (For Plaintiffs in Calhoun v. Google) 6 LAURA O'LAUGHLIN, Analysis Group 7 ANUSHKA SIKDAR, Boies Schiller Flexner 8 ROBERT FENTON, Video Operator 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 REMOTE VIDEOCONFERENCE APPEARANCES OF COUNSEL: 2 3 For Plaintiffs: 4 BOIES SCHILLER FLEXNER LLP 5 BY: JAMES LEE, ESQ. 6 BY: MARK C. MAO, ESQ. 7 BY: BEKO O. REBLITZ-RICHARDSON, ESQ. 8 100 SE 2nd St., 28th Floor 9 Miami, Florida 33131 10 305.539.8400 11 jlee@bsflp.com 12 13 14 For Defendant: 15 QUINN EMANUEL URQUHART & SULLIVAN, LLP 16 BY: ALYSSA "ALY" OLSON, ESQ. 17 BY: STEPHEN BROOME, ESQ. 18 865 S. Figueroa Street, 10th Floor 19 Los Angeles, California 90017 20 213.443.3000 21 alyolson@quinnemanuel.com 22 23 24 25</p>	<p>1 INDEX OF EXAMINATION 2 3 WITNESS: MARK KEEGAN 4 EXAMINATION PAGE 5 BY MS. OLSON: 10, 243 6 BY MR. LEE: 241 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 of -- of any information that would guide me 2 otherwise.</p> <p>3 Q. You knew that your browsing wasn't 4 nonexistent completely because the Incognito screen 5 explains that it's visible to your ISP and websites 19:57:07 6 you visit; right?</p> <p>7 A. I can't say that I did. I had confidence, 8 as I can recall now, as best I can recall now, I had 9 confidence that when I was in Incognito, that -- 10 that this, you know, never happened. Yeah, I -- I 19:57:37 11 didn't sit around and -- and debate the issue like 12 we are now. And -- and if you asked me these -- 13 these questions prior to my involvement in this 14 case, and I -- and I thought harder about these 15 issues, you know, maybe -- maybe I'd have some more 19:57:55 16 clarity there. It's hard to say. But my 17 recollection of using Incognito was that this -- 18 this never happened.</p> <p>19 Q. But were you trying to get privacy from 20 Google specifically or from all companies that 19:58:18 21 engage in tracking?</p> <p>22 A. I would say all companies that -- when 23 using Incognito, I was under the impression and the 24 hope that -- that, as I said, that this -- this was 25 not something that was being retained in the data 19:58:52 Page 222</p>	<p>1 BY MS. OLSON: 2 Q. And so, you wouldn't want to facilitate 3 Google's receipt of this data from private browsing 4 mode users; is that correct -- or is that accurate? 5 MR. LEE: Wait, what? Say that again. 20:00:57 6 BY MS. OLSON: 7 Q. Is it accurate that you wouldn't want to 8 facilitate Google's receipt of this data from 9 private browsing mode users? 10 A. Yes. That's -- that I -- of -- of -- of 20:01:09 11 me or of other users? 12 MR. LEE: Yeah, let me object to the -- 13 beyond the scope of his expert opinion. If 14 Ms. Olson wants to ask you about your personal 15 beliefs for the next 20 minutes, it's fine, but I'd 20:01:29 16 ask for a running objection on beyond the scope. 17 BY MS. OLSON: 18 Q. The question was, is it accurate that you 19 wouldn't want to facilitate Google's receipt of data 20 from other private browsing mode users? 20:01:44 21 A. Correct. Yes. I -- I would not want to 22 be a party to that. 23 Q. Does your website currently use Google 24 Analytics? 25 A. I -- I think it does, but I'm not the 20:01:57 Page 224</p>
<p>1 sphere. 2 Q. And later in the paragraph, you say 3 that -- that you "did not know that Google receives 4 and saves from my private browsing mode activities, 5 including in particular when I am visiting 19:59:23 6 non-Google websites without being signed in to any 7 Google account. This was something I first learned 8 when I became engaged as an expert for this 9 litigation." [As read] 10 What exactly was it that you learned that 19:59:36 11 you did not know before after you were engaged in 12 this litigation? 13 MR. LEE: Document speaks for itself. 14 THE WITNESS: Well, I learned that there 15 is a immense amount of data collection that's going 19:59:51 16 on at the user level when you're in Incognito. So 17 that's -- that's what I learned. That was a -- 18 quite a surprise to me personally. 19 BY MS. OLSON: 20 Q. Were you offended by it? 20:00:17 21 A. Offended? I -- 22 MR. LEE: Beyond the scope. 23 THE WITNESS: Yeah, I -- I wouldn't use 24 the word "offended." I was surprised. I -- I felt 25 a little naive. 20:00:38 Page 223</p>	<p>1 person that deals with that. 2 Q. Does your website currently use Google Tab 3 Manager? 4 MR. LEE: Beyond the scope. 5 THE WITNESS: I don't know what that is. 20:02:19 6 BY MS. OLSON: 7 Q. Are you aware if those services -- well, 8 I'll just stick with Google Analytics since you said 9 you didn't know what Google Tab Manager was. 10 Are you aware if the Google Analytics 20:02:39 11 services on your websites continues [verbatim] to 12 function whether or not users are in Incognito mode? 13 MR. LEE: Beyond the scope. 14 THE WITNESS: As I sit here, to the extent 15 that we have Google Analytics, and I think we do. 20:02:52 16 So yes, I hadn't thought about this until you just 17 asked this question. But, yes, it -- it does appear 18 that I am now a party to this, that people who come 19 to our website because if we're using analytics, 20 that -- that from what I've learned in this case, 20:03:20 21 that Google is, you know, tracking them, if -- if 22 they're in private browsing mode and -- and 23 collecting data and doing -- doing -- doing what 24 they do. 25 So this is one of those, you know, gun to 20:03:34 Page 225</p>

<p>1 your head situations that we were discussing 2 earlier. Not thrilled about that. But analytics is 3 an important tool for a small company like mine and 4 for a big company like somebody else's, which is why 5 it's as successful as it is. 20:03:55 6 So will my disappointment in -- in 7 participating in this behavior, which I now know 8 very clearly users do not expect to happen, I don't 9 love it, but you don't see myself removing analytics 10 from my website. 20:04:19 11 BY MS. OLSON: 12 Q. Okay. Let's turn to the next paragraph, 13 26. 14 A. Okay. 15 Q. In paragraph 26, you say, "This study of 20:04:37 16 1,075 U.S. respondents was designed and executed in 17 accordance with accepted standards of survey 18 research. This survey followed the guide" -- "the 19 guiding principles for survey research for the 20 purpose of litigation as outlined by Shari Diamond." 20:04:59 21 [As read] 22 Do you see that? 23 A. I do. 24 Q. Would you agree that Shari Diamond is an 25 authority on best practices for survey research used 20:05:10 Page 226</p>	<p>1 Q. And in the approximately 1,000 consumer 2 surveys I believe you said you've conducted, in 3 approximately how many would you say you've 4 pretested versus not pretested? 5 A. Those surveys expand over my, you know, 20:06:36 6 20-plus year career. So there's going to be recency 7 bias in this answer, just to warn you. But so I -- 8 I don't know. I would speculate that pretesting is 9 certainly a tool in the -- in the tool kit, 10 available when I have concerns about whatever they 20:07:06 11 are. And they -- they vary wildly -- widely for a 12 particular survey. So there's certainly 13 circumstances pretesting is appropriate. And I've 14 used it. In what percentage, I don't know. But 15 it -- it is something that I've done when I have 20:07:32 16 certain concerns about a survey. And it can be 17 helpful. This was not one of the cases. 18 Q. What is your methodology for determining 19 whether a case, it would be helpful to do a pretest, 20 and when it would not be helpful? 20:07:53 21 A. Sure. 22 Well, I -- I have and I do conduct a great 23 many surveys. So when I have -- when I have a -- 24 a -- or when I don't have a comfort level to say the 25 inverse, that this survey -- again, it's -- it's 20:08:15 Page 228</p>
<p>1 in litigation? 2 A. I would. 3 Q. And you cite this paragraph in both of 4 your reports? Or a similar paragraph in both of 5 your reports? 20:05:24 6 A. I do. 7 Q. And you believe that a reliable and valid 8 survey should follow these principles, the ones 9 listed in the bullets of paragraph 26? 10 A. I do. 20:05:35 11 Q. The second bullet is a "Rigorous and valid 12 survey design that is probative of the relevant 13 issues in the matter." 14 Do you see that? 15 A. I do. 20:05:48 16 Q. And we briefly mentioned it earlier, but 17 did you conduct any pretesting? 18 A. I did not. 19 Q. Why not? 20 A. Well, for both of these surveys, I did not 20:05:56 21 see the need to -- to pretest the survey. There was 22 nothing that concerned me about the design. There 23 was nothing that stood out to me as potentially 24 problematic. So in that scenario, I -- I would not. 25 And in this case, did not do any pretesting. 20:06:19 Page 227</p>	<p>1 really hard to -- to put this in a group because 2 there are lots of reasons that I might pretest. 3 But if -- if I don't have a sufficient 4 comfort level that some component or the survey or 5 the flow or the questions or wording or, you know, 20:08:36 6 any -- any number of things may be problematic for 7 any number of reasons, then that would trigger a 8 concern about pretests and something that I would 9 bring up with the client and suggest that we engage 10 in so that we can get the survey right. And maybe 20:08:57 11 we have it right. 12 But there's a sufficient concern of 13 whatever it is that we want to bring this to -- 14 however you do the pretest. And there's -- you 15 know, there's a number of ways to do that. But we 20:09:15 16 want to bring this to some small group of -- of 17 respondents and -- and evaluate something. And then 18 regroup and see if it's -- see if we've learned 19 anything and if any changes can be made. 20 Q. Without conducting pretest for either of 20:09:38 21 your surveys, how do you have scientific evidence 22 that respondents found your survey questions clear? 23 A. Well, pretests are typically not 24 quantitative, right. They're qualitative. So 25 that's not scientific evidence, as you describe it. 20:10:05 Page 229</p>


<p>1 JURAT</p> <p>2</p> <p>3 I, MARK KEEGAN, do hereby certify under</p> <p>4 penalty of perjury that I have read the foregoing</p> <p>5 transcript of my deposition taken remotely on</p> <p>6 Friday, July 15, 2022; that I have made such</p> <p>7 corrections as appear noted herein in ink, initialed</p> <p>8 by me; that my testimony as contained herein, as</p> <p>9 corrected, is true and correct.</p> <p>10</p> <p>11 Dated this ____ day of _____, 2022,</p> <p>12 at _____.</p> <p>13</p> <p>14</p> <p>15</p> <p>16 _____</p> <p>17 MARK KEEGAN</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 246</p>	<p>1 Mr. Mark Keegan</p> <p>2 mark@keegandonato.com</p> <p>3 July 20, 2022</p> <p>4 RE: CHASOM BROWN vs. GOOGLE LLC</p> <p>5 July 15, 2022, Mark Keegan (JOB NO. 5302317)</p> <p>6 The above-referenced transcript has been</p> <p>7 completed by Veritext Legal Solutions and</p> <p>8 review of the transcript is being handled as follows:</p> <p>9 __ Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext</p> <p>10 to schedule a time to review the original transcript at</p> <p>11 a Veritext office.</p> <p>12 __ Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF</p> <p>13 Transcript - The witness should review the transcript and</p> <p>14 make any necessary corrections on the errata pages included</p> <p>15 below, notating the page and line number of the corrections.</p> <p>16 The witness should then sign and date the errata and penalty</p> <p>17 of perjury pages and return the completed pages to all</p> <p>18 appearing counsel within the period of time determined at</p> <p>19 the deposition or provided by the Code of Civil Procedure.</p> <p>20 __ Waiving the CA Code of Civil Procedure per Stipulation of</p> <p>21 Counsel - Original transcript to be released for signature</p> <p>22 as determined at the deposition.</p> <p>23 __ Signature Waived – Reading & Signature was waived at the</p> <p>24 time of the deposition.</p> <p>25</p> <p>Page 248</p>
<p>1 CERTIFICATE OF REPORTER</p> <p>2 I, Hanna Kim, a Certified Shorthand</p> <p>3 Reporter, do hereby certify:</p> <p>4 That prior to being examined, the witness</p> <p>5 in the foregoing proceedings was by me duly sworn to</p> <p>6 testify to the truth, the whole truth, and nothing</p> <p>7 but the truth;</p> <p>8 That said proceedings were taken before me</p> <p>9 at the time and place therein set forth and were</p> <p>10 taken down by me in shorthand and thereafter</p> <p>11 transcribed into typewriting under my direction and</p> <p>12 supervision;</p> <p>13 I further certify that I am neither</p> <p>14 counsel for, nor related to, any party to said</p> <p>15 proceedings, not in anywise interested in the</p> <p>16 outcome thereof.</p> <p>17 Further, that if the foregoing pertains to</p> <p>18 the original transcript of a deposition in a federal</p> <p>19 case, b oceedings, review</p> <p>20 of the i ot requested.</p> <p>21 I hereunto</p> <p>22 subscri</p> <p>23 Dated: </p> <p>24 Hanna Kim</p> <p>25 CLR, CSR No. 13083</p> <p>Page 247</p>	<p>1 __X__ Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF</p> <p>2 Transcript - The witness should review the transcript and</p> <p>3 make any necessary corrections on the errata pages included</p> <p>4 below, notating the page and line number of the corrections.</p> <p>5 The witness should then sign and date the errata and penalty</p> <p>6 of perjury pages and return the completed pages to all</p> <p>7 appearing counsel within the period of time determined at</p> <p>8 the deposition or provided by the Federal Rules.</p> <p>9 __ Federal R&S Not Requested - Reading & Signature was not</p> <p>10 requested before the completion of the deposition.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 249</p>

EXHIBIT 32

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION
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4

5 CHASOM BROWN, WILLIAM BYATT,
6 JEREMY DAVIS, CHRISTOPHER
7 CASTILLO, and MONIQUE
8 TRUJILLO, individually and on
9 behalf of all other similarly
10 situated,
11

12 Plaintiffs,

13 No.

14 vs.

15 4:20-cv-03664-YGR-SVK

16 GOOGLE LLC,
17

18 Defendant.
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26 VIDEOTAPED DEPOSITION OF BRUCE SCHNEIER
27 Remote Zoom Proceedings
28 Cambridge, Massachusetts
29 Monday, July 18, 2022
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36 REPORTED BY:

37 LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

38 Pages 1 - 233

39 Job No. 5312337

40 Page 1

<p>1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION 3 4 5 CHASOM BROWN, WILLIAM BYATT, JEREMY DAVIS, CHRISTOPHER 6 CASTILLO, and MONIQUE TRUJILLO, individually and on 7 behalf of all other similarly situated, 8 Plaintiffs, 9 No. vs. 4:20-cv-03664-YGR-SVK 10 GOOGLE LLC, 11 Defendant. 12 _____/ 13 14 15 Videotaped deposition of BRUCE SCHNEIER, 16 taken on behalf of Defendant, Remote Zoom Proceedings 17 from Cambridge, Massachusetts, beginning at 11:03 a.m. 18 Eastern Daylight Time and ending at 7:20 p.m. Eastern 19 Daylight Time, on Monday, July 18, 2022, before 20 Leslie Rockwood Rosas, RPR, Certified Shorthand Reporter 21 No. 3462. 22 23 24 25</p> <p style="text-align: right;">Page 2</p>	<p>1 APPEARANCES (Continued): 2 3 MORGAN & MORGAN 4 BY: JOHN A. YANCHUNIS, ESQ. 5 201 North Franklin Street, 7th Floor 6 Tampa, Florida 33602 7 (813) 223-5505 8 jyanchuis@forthepeople.com 9 10 11 FOR THE DEFENDANT: 12 QUINN EMANUEL URQUHART & SULLIVAN, LLP 13 BY: STEPHEN A. BROOME, ESQ. 14 ALYSSA (ALY) G. OLSON, ESQ. 15 865 South Figueroa Street, 10th Floor 16 Los Angeles, California 90017 17 (213) 443-3285 (Mr. Broome) 18 (213) 443-3000 (Ms. Olson) 19 stephenbroome@quinnemanuel.com 20 alyolson@quinnemanuel.com 21 22 Also Present: 23 Elvert Ling, Quinn & Emanuel summer associate 24 Haimin Zhang, Analysis Group 25 Robert Fenton, Videographer</p> <p style="text-align: right;">Page 4</p>
<p>1 APPEARANCES: 2 3 FOR THE PLAINTIFFS: 4 SUSMAN GODFREY LLP 5 BY: IAN B. CROSBY, ESQ. 6 1201 Third Avenue, Suite 3800 7 Seattle, Washington 98101 8 (206) 516-3861 9 icrosby@susmangodfrey.com 10 -and- 11 BY: ALEXANDER P. FRAWLEY, ESQ. 12 3201 Avenue of the Americas, 32nd Floor 13 New York, New York 10019 14 (212) 729-2044 15 afrawley@susmangodfrey.com 16 17 BOIES SCHILLER FLEXNER LLP 18 BY: HSIAO (MARK) C. MAO, ESQ. 19 44 Montgomery Street, 41st Floor 20 San Francisco, California 91401 21 (415) 293-6800 22 mmao@bsflp.com 23 24 25</p> <p style="text-align: right;">Page 3</p>	<p>1 I N D E X 2 3 4 MONDAY, JULY 18, 2022 5 6 WITNESS EXAMINATION 7 BRUCE SCHNEIER 8 9 BY MR. BROOME 10 10 BY MR. CROSBY 220 11 12 13 14 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER: 15 (NONE) 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 5</p>

<p>1 Q. Okay. Have you ever offered any expert opinions 2 in the field of marketing?</p> <p>3 A. No, I have not.</p> <p>4 Q. Okay. Do you promote yourself as an expert in 5 marketing? 11:51:23</p> <p>6 A. I certainly do not.</p> <p>7 Q. And we talked before, you don't have any 8 expertise in consumer surveys; correct?</p> <p>9 A. I do not.</p> <p>10 Q. Do you have any expertise in measuring consumer 11:51:38 11 expectations?</p> <p>12 A. I do not.</p> <p>13 Q. Do you have any expertise in online advertising?</p> <p>14 A. Some. I know how it works.</p> <p>15 Q. Okay. Have you ever promoted yourself as an 11:51:55 16 expert in online advertising?</p> <p>17 A. I have not.</p> <p>18 MR. CROSBY: Object to the form.</p> <p>19 Q. BY MR. BROOME: I think your current title is 20 securities technologist; is that right? Or maybe you 11:52:05 21 have many titles.</p> <p>22 A. What do you mean by "title"?</p> <p>23 Q. I think in paragraph 7 you say you work 24 internationally as a security technologist.</p> <p>25 A. That is correct. 11:52:31</p> <p style="text-align: right;">Page 38</p>	<p>1 Q. Okay. You mentioned computer security and 2 network security. Is security -- do you mean keeping 3 people out of systems in which they should not be in?</p> <p>4 A. That's part of it; right? If I'm running a 5 prison, it's keeping people into systems where they 11:54:23 6 shouldn't be out.</p> <p>7 So security is very complex, and you probably 8 don't want to debate this at length. I spend time in my 9 books trying to define this term. It's a very squishy 10 term. Because it really has to do with things that are 11:54:41 11 permitted, which implies a permitter, and what does that 12 mean. Things that are prohibited.</p> <p>13 And it's not just access. In data, we worry 14 about availability. You know, if someone took this Zoom 15 down, it would be a security violation, even though they 11:54:58 16 might not be eavesdropping on us.</p> <p>17 It's integrity. If someone went in and changed 18 the transcript of this deposition, we'd both be pissed 19 off, but that -- you know, they may not have stolen 20 anything. Security has a lot of aspects to it. 11:55:13</p> <p>21 Q. Okay. Paragraph 7 says you presently hold the 22 title of Chief Security Architecture at Inrupt Inc. What 23 is Inrupt?</p> <p>24 A. Inrupt is a company that is commercializing 25 solid. I'll do this relatively quickly. Solid is a web 11:55:34 Page 40</p>
<p>1 Q. Okay. And what is a security technologist?</p> <p>2 A. A security technologist is to me someone who 3 combines security, technology, and people. So as opposed 4 to a cryptographer, who knows mathematical security. As 5 opposed to an internet security expert, who might know 11:52:51 6 web security or Linux security.</p> <p>7 I work at the intersection of security, 8 technology, and people. And security technologist is the 9 best phrase I've come up with to describe that. That's 10 why I kind of react to the title because it's not really 11:53:08 11 bestowed on me by anybody.</p> <p>12 Title to me implies that it's something you're 13 given by your boss or the government or somebody. That's 14 what I call myself. Because I tried to encapsulate that, 15 that security and people and technology, all three. 11:53:27</p> <p>16 Q. And when you say "security," what are you 17 referring to?</p> <p>18 A. I refer to security pretty broadly. In a sense, 19 my career has been an endless series of generalizations. 20 I started out in mathematical security and cryptography 11:53:43 21 and then worked in computer security, network security, 22 general security tech, and then really into the economics 23 of security, the psychology of security, the sociology 24 and then public policy of security. So I'm really 25 meaning that very broadly. 11:54:05</p> <p style="text-align: right;">Page 39</p>	<p>1 standard invented by Tim Berners-Lee, who actually 2 invented the web -- he's kind of an important guy -- for 3 distributed data ownership.</p> <p>4 Inrupt is a company that is commercializing that 5 standard. If you know anything about Linux, Inrupt is 11:55:51 6 basically the RedHat of solid.</p> <p>7 Q. You have formerly been a board member of the 8 Tor Project?</p> <p>9 A. I was, yes.</p> <p>10 Q. And what is the Tor Project? 11:56:17</p> <p>11 A. The Tor Project is a browser extension that 12 allows people to browse the web anonymously.</p> <p>13 Q. Including from Google?</p> <p>14 A. Google employees can browse the web anonymously 15 using Tor, yes. 11:56:39</p> <p>16 Q. Can users of the Tor browser extension browse 17 the web anonymously from Google, meaning Google would not 18 receive any of their data while they browse the web?</p> <p>19 A. So anonymously doesn't mean not receiving -- 20 back to the question. So from Google, I'm interpreting 11:57:01 21 to mean from Google's offices. So I am inside Google and 22 I am using Tor.</p> <p>23 Q. Okay.</p> <p>24 A. I think you mean something differently.</p> <p>25 Q. Yeah, I do. I'm thinking more along the lines 11:57:14 Page 41</p>

<p>1 of the data collection described or at issue in this 2 case.</p> <p>3 Is -- is using the Tor browser extension a way 4 to obtain privacy from Google? Let me -- I didn't --</p> <p>5 A. Yeah. 11:57:33</p> <p>6 Q. -- solve the problem.</p> <p>7 A. Yeah. You need to be careful.</p> <p>8 Q. Yeah, let me try and solve the problem better.</p> <p>9 Is using the Tor browser extension a way to 10 prevent Google tracking through analytics and ad 11:57:45 11 services?</p> <p>12 A. No.</p> <p>13 Q. So, sorry, explain to me again what it is that 14 Tor provides, how Tor provides privacy.</p> <p>15 A. So Tor is the anonymity service. So when you 11:58:09 16 use the Tor browser, the website you visit doesn't know 17 who you are based on browsing. And it does that through 18 onion routing.</p> <p>19 So basically what Tor does is it routes your 20 browser requests through a network of other browsers 11:58:33 21 around the world, and it uses three of them, which we can 22 talk about mathematically why that's a good idea if you 23 want. I suspect you don't. But the recipient at the 24 other end, let's say it's The New York Times, 25 substantiate it, doesn't know that you are making the 11:58:48</p> <p style="text-align: right;">Page 42</p>	<p>1 happen at the web server. The web server contracts with 2 Google, puts Google code on its server, and that 3 communicates back to Google.</p> <p>4 So what Tor is doing, it's protecting the 5 connection between myself and The New York Times. It is 12:00:46 6 limiting, but not -- but not to zero the data The New 7 York Times gets about me. Anything The New York Times 8 gets is transmitted back to Google.</p> <p>9 So Google is getting the full take of what The 10 New York Times is sending it. 12:01:06</p> <p>11 Q. But The New York Times doesn't know who you are; 12 right?</p> <p>13 A. They might.</p> <p>14 MR. CROSBY: Object to the form.</p> <p>15 Q. BY MR. BROOME: How about if you don't sign in? 12:01:13</p> <p>16 A. But if there is a cookie from a previous sign 17 in. I don't know how The New York Times might be 18 figuring out who you are. I also don't know how Google 19 might figure out who you are based on the information 20 provided. 12:01:29</p> <p>21 Tor is designed so that people in the middle, 22 like you are the Chinese firewall making sure that I 23 don't go to Wikipedia and look up Falun Gong. That's the 24 threat model.</p> <p>25 And what Tor is providing is anonymity so that 12:01:44</p> <p style="text-align: right;">Page 44</p>
<p>1 query.</p> <p>2 Now it does not protect you if you log in. And 3 if you log into The New York Times, you've logged in. 4 And you know, this is something that it turns out to be 5 hard to educate Tor users on sometimes. 11:59:05</p> <p>6 But specifically, it hides your routing on the 7 internet. So it has uses in evading censorship. Maybe 8 you are a user in China. Maybe you are a user in a 9 company that blocks The New York Times. They don't want 10 you to read the newspaper at work. Tor will mask that 11:59:22 11 from the network.</p> <p>12 Q. What -- what is it masking specifically? Is it 13 masking your IP address, your user agents, or all of the 14 above?</p> <p>15 A. Now so I don't want to get it wrong. It will 11:59:41 16 mask the IP address. Whether it masks the other things 17 depends on the details that I -- I would look it up 18 before I answered.</p> <p>19 Q. Okay. Fair.</p> <p>20 And I asked you whether it would provide privacy 12:00:06 21 or prevent, rather. I asked you whether it would prevent 22 Google from tracking you using the analytics and 23 advertising services that are at issue in this case, and 24 you said "no." And why is that?</p> <p>25 A. So the analytics, as far as I understand it, 12:00:27</p> <p style="text-align: right;">Page 43</p>	<p>1 China doesn't know what you're looking up on Wikipedia, 2 Wikipedia doesn't know where they're sending the Falun 3 Gong article to, and the censor in the middle just sees 4 opaque traffic. That's the threat level. That's what 5 Tor does. 12:02:03</p> <p>6 Anything else is going to be ancillary, and it's 7 going to depend on a lot of things that I don't know. 8 But it's not what Tor is intended to do.</p> <p>9 Q. You've published 12 books; is that right?</p> <p>10 A. I like to say approximately 12 because it's 12:02:22 11 harder than you think to count books.</p> <p>12 Q. Okay. How many -- how many books were on the 13 topic of privacy?</p> <p>14 A. Many books touch on privacy, but one book was 15 about privacy, and that's Data and Goliath. 12:02:39</p> <p>16 Q. Okay. What about Click Here to Kill Everybody?</p> <p>17 A. Privacy's in there, but it's really about 18 security and safety.</p> <p>19 Q. Okay. Do you know approximately how many copies 20 of Data and Goliath were sold? 12:02:51</p> <p>21 A. I should know that, and the answer is yes, but I 22 can't remember.</p> <p>23 Q. Can you ballpark it?</p> <p>24 A. Under a hundred thousand, but not much under a 25 hundred thousand. 12:03:03</p> <p style="text-align: right;">Page 45</p>

<p>1 Q. Okay. And what about Click Here to Kill 2 Everybody?</p> <p>3 A. Less. I'm going to say 35,000. I'm guessing 4 here, but it will be ballparking.</p> <p>5 Q. Do you encourage your students to read your 12:03:18 6 books in any of your classes?</p> <p>7 A. You know, I think it's kind of rude to tout your 8 own stuff in your own class. It feels a little 9 self-serving. I do assign chapters of some of my books, 10 but I give them a photocopy so they don't have to buy it, 12:03:34 11 but I try to have them read other -- other authors. I 12 figure they get enough of me in class. They don't need 13 more of me.</p> <p>14 Q. Have you ever testified as an expert in 15 litigation before? 12:03:46</p> <p>16 A. I have.</p> <p>17 Q. How many times?</p> <p>18 A. I don't know, but the last page of my CV -- oh, 19 wait. Cross that out. I've never testified in trial. 20 You people always settle before it goes to trial. I have 12:04:00 21 been deposed, and the number of times is in the last page 22 of the CV if you count them up.</p> <p>23 MR. BROOME: I won't take offense to the term 24 "you people."</p> <p>25 Okay. We've been going a little over an hour 12:04:16 Page 46</p>	<p>1 break before and after.</p> <p>2 Q. Do you recall reviewing articles -- well, strike 3 that. Let me start again.</p> <p>4 Before you got involved in this case, do you 5 recall reviewing articles saying that Incognito mode or 12:16:30 6 private browsing mode is not really private; it only 7 deletes data locally?</p> <p>8 A. Not specifically. No.</p> <p>9 Q. Do you recall any articles explaining that 10 Incognito mode doesn't prevent Google from tracking you? 12:16:56</p> <p>11 A. Not specifically, no.</p> <p>12 Q. Putting aside whether you can recall the 13 specific articles, can you recall generally reviewing 14 articles on those topics?</p> <p>15 A. Again, it's inconceivable that I didn't because 12:17:11 16 I think some were written and things go across my orbit, 17 but I cannot recall specifically.</p> <p>18 Q. So you think it might -- sorry. I didn't mean 19 to interrupt.</p> <p>20 So you think it's likely that you did read an 12:17:32 21 article explaining that Incognito mode doesn't prevent 22 Google from tracking you?</p> <p>23 A. Not --</p> <p>24 MR. CROSBY: Object to the form. Sorry.</p> <p>25 THE WITNESS: Google specifically, I'm even less 12:17:46 Page 48</p>
<p>1 now. Why don't we take a ten-minute break.</p> <p>2 MR. CROSBY: That's fine.</p> <p>3 THE WITNESS: All right. So I'm going to go on 4 mute.</p> <p>5 THE VIDEOGRAPHER: Going off the record at 12:04:25 6 12:04 p.m. 7 (Recess.)</p> <p>8 THE VIDEOGRAPHER: We are back on the record at 9 12:15 p.m.</p> <p>10 Q. BY MR. BROOME: Mr. Schneier, can you turn to 12:15:14 11 paragraph 19 of your report.</p> <p>12 A. I'm there.</p> <p>13 Q. Okay. It says: "I have spent my entire career 14 focused on issues relating to privacy, reviewing articles 15 and materials regarding online privacy." 12:15:40</p> <p>16 Does that include articles relating to private 17 browsing mode?</p> <p>18 A. I mean, it's inconceivable that I didn't read 19 anything about private browsing before this case. So I'm 20 going to answer yes. 12:16:00</p> <p>21 Q. Can you recall the gist of any articles you read 22 about private browsing before you got involved in this 23 case?</p> <p>24 A. You know, I've read so much after that that's 25 all tainted, and I'm not convinced I can give you a clean 12:16:14 Page 47</p>	<p>1 sure about, but if there are articles -- if there are 2 articles that talk about the Incognito mode in the press 3 before the lawsuit, I likely will have seen them.</p> <p>4 Q. BY MR. BROOME: Okay. Before you got involved 5 in this case, you were aware that Incognito mode only 12:18:10 6 deletes data locally from your browser and doesn't 7 prevent Google from tracking you; correct?</p> <p>8 A. Before this case, I was aware that browsers in 9 general have a privacy mode that prevents them from 10 storing data locally. I'm not a Chrome user, and I don't 12:18:32 11 know if I specifically thought about what other means 12 Google as a company has tracking Chrome users when 13 they're using the Chrome-branded Incognito mode.</p> <p>14 Q. Okay. Let me ask the question slightly 15 differently. 12:19:01</p> <p>16 During the class period, you were aware that 17 private browsing mode in general only delete data locally 18 from your browser; correct?</p> <p>19 A. So using the word "only," which I would want to 20 strike. If you strike the word "only," I would agree 12:19:15 21 with your sentence. And actually, if you add "during at 22 least part of the class period." Because now it's like 23 when's the class period and when's the first article. I 24 couldn't give you the dates.</p> <p>25 Q. Okay. 12:19:31 Page 49</p>

<p>1 Q. So as of 2015, you were aware that Google 2 collects a lot of information through Google Analytics; 3 correct? 4 A. As of 2014, but yes. 5 Q. 2014, okay. But as of 2014 -- and the process 12:37:15 6 through which you understood Google to be tracking users 7 was the same process that's alleged in plaintiffs' 8 Complaint; right? The scripts are embedded in the web 9 page and sends information to Google's servers? 10 A. I would add one of the processes, but yes. 12:37:34 11 Q. Okay. Fair. 12 And then you say here: "Those sites let Google 13 track me through them." 14 What do you mean by that? 15 A. What I'm trying to say in very general terms -- 12:37:43 16 because, remember, I'm writing for a general audience 17 here so I'm sloppy with tech, all throughout this book. 18 What I'm saying is, you're reviewing The New York Times. 19 The New York Times has Google Analytics. The New York 20 Times has a relationship with Google that's allowing 12:38:03 21 Google to track what I do on The New York Times. 22 Q. Okay. Okay. Now let's go to -- just for the 23 record, the language that I read to you from your book, 24 I'm reading it from Exhibit 3, but you're reading it from 25 the hard copy of your actual book; right? 12:38:31 Page 62</p>	<p>1 technologies are available to protect your data. For 2 example, there are easy-to-use plug-ins for browsers that 3 monitor and block sites that track you as you wander the 4 internet: LightBeam, Privacy Badger, Disconnect, 5 Ghostery, FlashBlock, and others." 12:40:43 6 Do you see that? 7 A. I do. 8 Q. And do you still -- is that still your opinion 9 today, that there are lots of PETs that can help you 10 block mass surveillance? 12:40:52 11 A. Yes. 12 Q. And those include easy-to-use plug-ins such as 13 those that you mention there? 14 A. Now some of those, I don't recognize so they 15 might be gone, but certainly Ghostery and Privacy Badger 12:41:05 16 are still around. 17 Q. And are those popular plug-ins? 18 A. I actually don't know market penetration. 19 Q. Okay. Do you use any of any of these plug-ins? 20 A. I do. 12:41:21 21 Q. Which ones do you use? 22 A. I would rather not say. 23 Q. Okay. That's fine. 24 But you use one of the ones on the list there; 25 is that fair? 12:41:34 Page 64</p>
<p>1 A. I am, and I'm verifying that it's the same. If 2 there's a difference, I'll let you know. There shouldn't 3 be. 4 Q. Yeah, and I'll just ask just so there's no 5 disputes down the road between me and plaintiffs' 12:38:44 6 counsel, that if there is a difference between the 7 language that I'm reading in Exhibit 3 and the hard copy 8 of your book, if you would please let us know. 9 A. I will let you know and also by -- figure out 10 why it's wrong. 12:38:57 11 Q. Okay. Excellent. 12 So now if you go to 215 in the hard copy, and 13 it's 153 of the PDF. 14 A. I'm here. 15 Q. Sorry, I think I got it wrong. It might be 152. 12:39:50 16 A. Oh, you're right. It's 215. 17 Q. It's 215. It might be 151 of the PDF, though, 18 for everyone else. 19 A. 215 is the totally the paragraph you want. 20 Q. Yeah. It sounds like you're there already. 12:40:03 21 Okay. Right. 22 So in the -- there's a paragraph there that says 23 "Block Surveillance" in big bold letters. And then the 24 next paragraph says: "Privacy enhancing technologies, or 25 PETs, can help you block mass surveillance. Lots of 12:40:26 Page 63</p>	<p>1 A. Yes. 2 Q. Okay. 3 A. Actually for this, I'm willing to say. I use 4 Privacy Badger. 5 Q. Privacy Badger. Okay. And do you know others 12:41:40 6 who use plug-ins? 7 A. I do. 8 Q. And do these plug-ins prevent Google from 9 tracking you? 10 A. You know, plug-ins -- none of these plug-ins are 12:41:52 11 all or nothing. So if you -- I think you're asking me do 12 any of these plug-ins prevent Google from tracking you in 13 any way possible. I don't know, but if you're asking for 14 advice, I would say don't count on it. 15 Q. Do they prevent -- would they prevent the data 12:42:12 16 collection that's at issue in this case? 17 A. It depends. Maybe some of it. 18 Q. Okay. What would it prevent and what would 19 it -- what would they not prevent? 20 A. All right? So which tool are you asking me 12:42:36 21 about? 22 Q. Let's start with Privacy Badger. 23 A. This is hard. So now I have to actually -- 24 right? This is where you go into exactly what Privacy 25 Badger blocks. I know it is an ad blocker. 12:42:48 Page 65</p>

<p>1 Q. Uh-huh.</p> <p>2 A. I know it is stripping out a bunch of data that</p> <p>3 goes with the URL to the recipient sites. And I mean, I</p> <p>4 have not done the analysis where I looked at exactly what</p> <p>5 Privacy Badger strips out, what is collected at issue. I 12:43:05</p> <p>6 would hesitate to offer an opinion on that without doing</p> <p>7 real research.</p> <p>8 Q. Okay. And then in the next sentence, it says:</p> <p>9 "Remember that the private browsing option on your</p> <p>10 browser only deletes data locally." Right? 12:43:23</p> <p>11 A. Yep. So you have it here is me knowing this in</p> <p>12 2014.</p> <p>13 Q. Okay. And then you go on and you say: "So</p> <p>14 while it's useful for hiding your porn viewing habits</p> <p>15 from your spouse, it doesn't block internet tracking." 12:43:37</p> <p>16 Correct.</p> <p>17 A. Yes. And I would talk about it as porn mode.</p> <p>18 That's actually a common way I would refer to it, as porn</p> <p>19 mode.</p> <p>20 Q. All right. So as of 2014, you were aware that 12:43:48</p> <p>21 the private browsing option on your browser only deletes</p> <p>22 data locally; correct?</p> <p>23 A. Right. That is -- in general, private browsing</p> <p>24 deletes data locally. And what I'm saying there, it</p> <p>25 doesn't do anything about who you're visiting; right? 12:44:06</p> <p style="text-align: right;">Page 66</p>	<p>1 privy to any of Google's marketing, I'm not reading their</p> <p>2 splash screen, I am not paying attention to what Google's</p> <p>3 executives are saying about Chrome or private browsing in</p> <p>4 general.</p> <p>5 I'm -- you know, just based on what I know about 12:45:56</p> <p>6 how a private browsing system would work in a browser,</p> <p>7 I'm saying that.</p> <p>8 So my -- my knowledge is in a sense specialized.</p> <p>9 It's as a security expert, not as a browser user.</p> <p>10 Q. Right. And you say that private -- the private 12:46:13</p> <p>11 browsing mode option on your browser only deletes data</p> <p>12 locally; right?</p> <p>13 A. Yes.</p> <p>14 Q. And so you knew in 2014 -- well, let me</p> <p>15 rephrase. 12:46:26</p> <p>16 When you say "locally," you mean just from the</p> <p>17 user's browser; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And how did you learn that fact?</p> <p>20 A. I don't remember. 12:46:50</p> <p>21 Q. Do you think it was based on sort of reviewing</p> <p>22 material out there on the web or, you know, did you</p> <p>23 perform some, you know, technical tests?</p> <p>24 A. I did not perform any technical tests. If</p> <p>25 others did, I would have read about it. In that same 12:47:13</p> <p style="text-align: right;">Page 68</p>
<p>1 The New York Times, when you're logged in, it's still</p> <p>2 going to be able to identify you with the articles you</p> <p>3 read, and private browsing doesn't do that.</p> <p>4 If you're logged into Facebook, and Facebook is</p> <p>5 doing a whole lot of tracking, it's not preventing that. 12:44:22</p> <p>6 It is working in the browser.</p> <p>7 Q. And it's not preventing Google from tracking</p> <p>8 you; right?</p> <p>9 A. So I'm not convinced I knew about Google's</p> <p>10 private browsing specifically. So I'm talking about 12:44:35</p> <p>11 private browsing in general.</p> <p>12 Q. Yes. No, and I'm not saying -- I'm not talking</p> <p>13 about Google's private browsing, either.</p> <p>14 But my point is that you knew in 2014 that</p> <p>15 private browsing modes in general do not prevent 12:44:49</p> <p>16 companies like Google from tracking you across the web.</p> <p>17 A. Yes.</p> <p>18 MR. CROSBY: Object to the form.</p> <p>19 Q. BY MR. BROOME: And you knew in 2014 that</p> <p>20 private browsing modes in general do not prevent Google 12:45:17</p> <p>21 from tracking you on non-Google websites; correct?</p> <p>22 A. I mean, so the question is did I know it</p> <p>23 explicitly? If you'd asked me then, I probably would</p> <p>24 have said probably not. Remember, all I'm knowing is</p> <p>25 sort of how private browsing works in general. I am not 12:45:40</p> <p style="text-align: right;">Page 67</p>	<p>1 paragraph, I'm pointing to various documents that I said</p> <p>2 people should use to protect their privacy. I'm sure I</p> <p>3 would have read those.</p> <p>4 There are people doing research in this area,</p> <p>5 and I would have known about their research. 12:47:32</p> <p>6 Q. Uh-huh.</p> <p>7 In the end notes, which I think are at page 356</p> <p>8 of the hard copy, 250 of the PDF.</p> <p>9 A. Uh-huh.</p> <p>10 Q. Maybe 249 of the PDF, actually. 12:48:17</p> <p>11 A. I see it on page 356.</p> <p>12 Q. Yep, 356.</p> <p>13 A. That's the end notes to page 215.</p> <p>14 Q. It says -- there's a sort of blue text -- for</p> <p>15 us, it's blue. It may not be for you. 12:48:39</p> <p>16 A. It's blue for me. I know what you're going to</p> <p>17 tell me.</p> <p>18 Q. Remember that the private browsing and then it</p> <p>19 says Sara M. Watson?</p> <p>20 A. Yes. 12:48:49</p> <p>21 Q. Does that mean that the statement that you made</p> <p>22 in your book where you say: "Remember that private</p> <p>23 browsing mode clears your browsing history only from</p> <p>24 your -- I'm sorry, no, I got that wrong. I was reading</p> <p>25 the wrong text. 12:49:03</p> <p style="text-align: right;">Page 69</p>

<p>1 Q. Yeah, I mean you know who he is. Yeah. Yep.</p> <p>2 And okay. And then it says, it goes on to quote</p> <p>3 him as saying: "In practice, they offer very little."</p> <p>4 Do you see that?</p> <p>5 A. I do. 13:03:12</p> <p>6 Q. And then the article of the author of the</p> <p>7 article writes: "The modes are short-term options that</p> <p>8 can limit what's recorded on one machine, not an</p> <p>9 all-encompassing way to be private online. The main</p> <p>10 functionality of Incognito mode is not saving cookies or 13:03:28</p> <p>11 browser history on the hard disk, meaning that private</p> <p>12 browsing sessions are isolated from normal ones."</p> <p>13 Do you agree with each of those two statements?</p> <p>14 A. Yes.</p> <p>15 Q. In the next paragraph, she writes: "Third-party 13:03:46</p> <p>16 tracking is generally achieved by websites storing</p> <p>17 cookies on a visitor's hard drive. Cookies are generally</p> <p>18 used to track repeat visits from the same user and build</p> <p>19 up a profile that's used to serve ads. In Incognito</p> <p>20 mode, your data is tracked in exactly the same way as 13:04:07</p> <p>21 normal mode. The difference is that in ordinary</p> <p>22 circumstances, trackers are unable to link a private</p> <p>23 browsing session with a normal session."</p> <p>24 Do you see that?</p> <p>25 A. I do. 13:04:21</p> <p style="text-align: right;">Page 78</p>	<p>1 MR. CROSBY: Object to the form.</p> <p>2 THE WITNESS: It's not something I have studied</p> <p>3 so I don't have an opinion on it.</p> <p>4 Q. BY MR. BROOME: Okay. And you don't have any</p> <p>5 opinion about what class members understand when they 13:05:43</p> <p>6 read the disclosures that are at issue in this case; is</p> <p>7 that accurate?</p> <p>8 MR. CROSBY: Object to the form.</p> <p>9 THE WITNESS: My opinions are really informed</p> <p>10 on, you know, what's being disclosed, the general 13:05:55</p> <p>11 principles we have in the industry of how to disclose</p> <p>12 things, and it's not based on surveys on what readers</p> <p>13 understand.</p> <p>14 MR. BROOME: Okay. This is probably a good</p> <p>15 breaking point. We can take a short break or we can take 13:06:22</p> <p>16 a lunch break. It's really up to you.</p> <p>17 THE WITNESS: You know, I'm going with what</p> <p>18 you're good with.</p> <p>19 MR. BROOME: Okay.</p> <p>20 THE WITNESS: This discussion's on the record, 13:06:31</p> <p>21 though.</p> <p>22 MR. BROOME: Yeah. Why don't we go off the</p> <p>23 record for a minute, if that's okay.</p> <p>24 MR. CROSBY: Sure.</p> <p>25 THE VIDEOGRAPHER: Going off the record at 13:06:38</p> <p style="text-align: right;">Page 80</p>
<p>1 Q. And do you agree with the statements in that</p> <p>2 paragraph?</p> <p>3 A. You know, I would cross out the word "exactly"</p> <p>4 if I were writing it, and I would probably be more</p> <p>5 equivocal than unable. 13:04:31</p> <p>6 Q. Okay. And why would you cross out the word</p> <p>7 "exactly"?</p> <p>8 A. Because if there's any difference at all, the</p> <p>9 statement's incorrect.</p> <p>10 Q. Okay. 13:04:42</p> <p>11 A. You asked me if I agree with it. Right? If</p> <p>12 it's like blue instead of red. Suddenly it's different.</p> <p>13 Q. Yeah, that's fair.</p> <p>14 A. So without knowing the details, you know, those</p> <p>15 kind of words are -- can be hard to use. 13:04:53</p> <p>16 Q. Okay. Would you agree that an individual who</p> <p>17 read this book -- or sorry, this article would understand</p> <p>18 that private browsing mode does not prevent Google from</p> <p>19 tracking them across the web?</p> <p>20 A. I have no idea -- 13:05:21</p> <p>21 MR. CROSBY: Object to the form.</p> <p>22 THE WITNESS: I have no idea what readers</p> <p>23 understand.</p> <p>24 Q. BY MR. BROOME: Okay. Do you have any idea what</p> <p>25 class members understand? 13:05:30</p> <p style="text-align: right;">Page 79</p>	<p>1 1:07 p.m.</p> <p>2 (Recess.)</p> <p>3 THE VIDEOGRAPHER: We are back on the record at</p> <p>4 1:25 p.m.</p> <p>5 Q. BY MR. BROOME: Mr. Schneier, I just want to go 13:25:06</p> <p>6 back to the question I asked you right before the break.</p> <p>7 I said: "And you don't have any opinion about what class</p> <p>8 members understand when they read the disclosures that</p> <p>9 are at issue in this case; is that accurate?"</p> <p>10 And your answer was: "My opinions are really 13:25:23</p> <p>11 informed, you know, what's being disclosed, the general</p> <p>12 principles we have in the industry of how to disclose</p> <p>13 things, and it's not based on surveys on what readers</p> <p>14 understand."</p> <p>15 And I take all that, and I think I understand 13:25:34</p> <p>16 your answer. But I just -- I just want to try to get a</p> <p>17 "yes" or "no" to my question, if that's possible.</p> <p>18 And again, the question was: You don't have any</p> <p>19 opinion in this case about what class members understand</p> <p>20 when they read the disclosures that are at issue in this 13:25:50</p> <p>21 case?</p> <p>22 A. Way to highlight my bad grammar.</p> <p>23 Q. No --</p> <p>24 A. I was not asked to provide opinions on what</p> <p>25 class members believe. 13:26:02</p> <p style="text-align: right;">Page 81</p>

<p>1 Q. Okay. Sorry. Go ahead. I interrupted you. Go 2 ahead.</p> <p>3 A. So I was not asked to provide opinions on what 4 class members believe. I was asked to provide opinions 5 on what Google discloses. So those are my opinions. 13:26:15</p> <p>6 Q. Okay. Prior to the Complaint being filed in 7 this case, have you ever used a private browsing mode.</p> <p>8 A. I have not, no.</p> <p>9 Q. And why is that? I mean, if you're a 10 privacy-focused guy; right? You use extensions and 13:26:42 11 plug-ins. Why did you never use a private browsing mode?</p> <p>12 A. I never used a shared computer.</p> <p>13 Q. Okay.</p> <p>14 A. I mean that slightly. And if I happen to be on 15 a shared computer, I'm not doing personal browsing. 13:27:06</p> <p>16 Q. Okay. All right.</p> <p>17 So on this topic of you not opining about what 18 class members or users in private browsing mode 19 understand, I just want to take a look back at your 20 report, which again is Exhibit 1. And if we could go 13:27:42 21 to -- we'll start at 285.</p> <p>22 Let me know when you're there.</p> <p>23 A. I'm here.</p> <p>24 Q. Okay. In the last sentence on 285 you say: 25 "Google's disclosures give rise to a reasonable 13:28:09 Page 82</p>	<p>1 disclosures, yes.</p> <p>2 Q. Right. Okay.</p> <p>3 So you're not saying that the splash screen did, 4 in fact, give rise to an expectation that the users 5 Incognito browsing history would not be collected or 13:29:58 6 saved by Google. You're saying if a user had that 7 expectation, it would be a reasonable one.</p> <p>8 Is that what you're getting at?</p> <p>9 MR. CROSBY: Object to the form.</p> <p>10 THE WITNESS: I think what I'm saying is that 13:30:15 11 Google's disclosures don't inform users about this 12 difference, and so that the splash screen statement 13 implies that Google is not going to -- not going to save 14 Incognito browsing history.</p> <p>15 Q. BY MR. BROOME: And your opinion is just based 13:30:40 16 on your own reading of the screen?</p> <p>17 A. "Just" is a -- is a tough word. I'm not a 18 random person coming in off the street and reading a 19 screen and telling you what I think. I mean, I write 20 books on this stuff. This is what I do. Security and 13:30:57 21 privacy experts have -- have standards of what disclosure 22 looks like, and we know when it's met and when it's not 23 met. So I kind of object to the word "just."</p> <p>24 Q. In 297, again you say: "Google's use of the 25 term 'private' to describe Chrome's Incognito mode gives 13:31:40 Page 84</p>
<p>1 expectation that Google will not collect users' private 2 browsing information."</p> <p>3 You don't know whether any class members 4 actually had that expectation; correct?</p> <p>5 A. That's right. And if you look at the paragraph, 13:28:19 6 it's about Google's disclosures. About what is being 7 disclosed, not about recipients.</p> <p>8 Q. Uh-huh. Okay.</p> <p>9 Then if you will turn to 298 -- sorry, not 298. 10 296. 13:28:53</p> <p>11 A. I'm there.</p> <p>12 Q. You discuss the splash screen. You say: "The 13 splash screen statement that Chrome won't save your 14 browsing history gives rise to a reasonable expectation 15 that the user's Incognito browsing history will not be 13:29:10 16 collected or saved by Google."</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. And again, you don't know whether any class 20 members or users in private browsing modes actually held 13:29:19 21 that expectation; correct?</p> <p>22 A. That's correct. And again, this sentence talks 23 about what Google discloses and how we in the industry 24 view how disclosures work, what is done, what -- how you 25 disclose to users. So that sentence is about the 13:29:42 Page 83</p>	<p>1 rise to a reasonable expectation not just that a user's 2 Incognito browsing will not be discoverable by other 3 users of a device, but also that the browsing will not be 4 collected and surveilled by Google."</p> <p>5 Do you see that? 13:31:56</p> <p>6 A. I do.</p> <p>7 Q. And again, I guess similar question: When you 8 say that the use of the word "private" gives rise to this 9 reasonable expectation, you're not opining that any user 10 actually held that expectation; you're just saying that 13:32:11 11 if a user did, in your opinion, that would be reasonable?</p> <p>12 A. Yes.</p> <p>13 Q. And therefore, would it also be reasonable if a 14 Google -- sorry, if -- yeah, if an Incognito user read 15 the phrase "now you can browse privately and other people 13:32:35 16 who use this device won't see your activity," would it 17 also be reasonable for them to expect that Incognito mode 18 provides only local privacy and not privacy from Google?</p> <p>19 A. So I think now you're asking me about users, and 20 again, I go back to that I did not survey users, and I'm 13:32:57 21 really speaking about the disclosures and not about the 22 recipients of those disclosures.</p> <p>23 Q. Yes, but I asked you if what you are saying is 24 that Google's use of the term 'private' to describe -- 25 when you say, "Google's use of the term 'private' to 13:33:12 Page 85</p>

<p>1 this case, there was just a ruling where the salaries of 2 a bunch of attorneys was made public. That has different 3 private implications in our culture than it does in 4 another culture.</p> <p>5 There will be cultures where your sexual 13:57:54 6 proclivities are more or less private. So I'm really 7 meaning by that. And especially over cultures and over 8 times, that what we choose to keep private changes. 9 Cultural, all those words I used. I'm really referring 10 to the types of things that we agree to keep private. 13:58:11 11 "Agree" is a bad word. That we might want to keep 12 private.</p> <p>13 Q. Okay. Do you agree that you can have privacy 14 from some but not others?</p> <p>15 A. I do. 13:58:25</p> <p>16 Q. For example, you could have privacy from other 17 people who use your device but not from your ISP; right?</p> <p>18 A. That is certainly true.</p> <p>19 Q. And you could have privacy from other people who 20 use your device, but not from the websites that you 13:58:41 21 visit; right?</p> <p>22 A. Yes.</p> <p>23 Q. And so the word "privacy" just in and of itself 24 does not convey necessarily that you are free from 25 observation from everyone? 13:58:54 Page 102</p>	<p>1 wouldn't say now you can pee privately and put a period 2 on it. That's a very crappy analogy. I'm going to 3 change it and do it again. I'm sorry.</p> <p>4 Q. I've got to say I actually really like it.</p> <p>5 A. No, it's a bad analogy. 14:00:59</p> <p>6 Q. No, they're good ones. They're really good ones 7 and they're practical real-world examples. I like it.</p> <p>8 A. But I want to get one, yes, scatological.</p> <p>9 Q. Do you agree that by providing -- I guess let 10 me -- let me try and formulate a better question here. 14:01:21 11 Do you agree that if Incognito mode only 12 provides privacy from other people who use your device -- 13 well, now I put the answer in the question. Let me try 14 again.</p> <p>15 Do you believe that if Incognito mode conceals 14:01:38 16 your browsing activity from other people would use your 17 device, that Incognito mode provides a measure of 18 privacy?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Actually, maybe we will go to -- well, 14:02:05 21 I'll try this again with Data and Goliath, and you can 22 tell me if you want to go back to the source.</p> <p>23 You have a statement in there that says: "Most 24 people don't seem to care whether their intimate details 25 are collected and used by corporations. Most people are 14:02:21 Page 104</p>
<p>1 A. Again, it will depend how it's used. If I say, 2 you know, when you go to the bathroom, you're private in 3 there, and you find out later there's a camera. And I 4 say, "Well, don't worry, the camera went to the police; I 5 didn't see it," you're going to say what the hell. So it 13:59:12 6 depends on lot on how that word's used.</p> <p>7 Q. In the splash screen where Google says "now you 8 can browse privately and other people who use your 9 device" -- "your device won't see your activity," is it 10 your opinion that that conveys two separate concepts: 13:59:43 11 One, on the one hand, you can browse privately from 12 Google, and on the other hand, you can browse privately 13 from other people who use your device?</p> <p>14 A. I think it's actually kind of like the "camera 15 in the bathroom" story; right? What I said is: You go 14:00:02 16 to the bathroom, and it's private. What the splash 17 screen says is it's private. There's a period at the 18 end. There's not a caveat. There's not like from me, 19 from Google, from your neighbors, from your friends. It 20 is a -- it's given as a categorical. And that implies 14:00:23 21 that it is complete. That it is from everybody. Because 22 we're not saying only in this way, only in that way.</p> <p>23 If I wanted to convey to you that when you went 24 into the bathroom, it would be private from me, but the 25 police could watch you, I would kind of say that. I 14:00:45 Page 103</p>	<p>1 happy to exchange sensitive personal information for free 2 email, web search, or a platform on which to chat with 3 their friends."</p> <p>4 Do you agree with those statements?</p> <p>5 A. You know, I would not write that today. 14:02:39</p> <p>6 Q. Okay. What's changed?</p> <p>7 A. I think people's awareness has changed. People 8 are more aware of -- of in general how they're being 9 tracked on the internet. I think there's a feeling of 10 helplessness among people and so "happy," too, is a word 14:02:58 11 I would not use anymore. And I don't even know if it was 12 right then. I think people are more grudgingly 13 accepting, in many cases.</p> <p>14 There's a lot of unawareness. I find this even 15 in my classes when I try to teach the stuff, that 14:03:20 16 surprised the number of people that are surprised.</p> <p>17 There was a class last year, and there was 18 someone from Facebook in the class talking about Facebook 19 data collection and how it's used, and people are 20 expressing surprise that a lot of this is happening. 14:03:37</p> <p>21 And the former employee, who is now a student 22 there, said: "This is how Facebook works. Don't you 23 realize that?"</p> <p>24 So it is an interesting measure of complicated 25 things that are going on. And you know, that -- those 14:03:52 Page 105</p>

<p>1 A. Google -- among other things, Google uses</p> <p>2 cookies to track users, yes.</p> <p>3 Q. What are the other things that Google uses to</p> <p>4 track users?</p> <p>5 A. Google tracks users by unique IDs of devices. 14:09:04</p> <p>6 Google tracks users by logging in, so your login. Google</p> <p>7 tracks users through hidden pixels. I'm blanking on what</p> <p>8 they're called -- it's in my report -- and various</p> <p>9 tracking beacons. Google tracks users through</p> <p>10 information it gets from websites. 14:09:24</p> <p>11 Did I mention browsers and devices? I think I</p> <p>12 did. And there's probably other things, too. I would --</p> <p>13 writing this as an article, I would, you know, make sure</p> <p>14 the list is complete. That's off the top of my head.</p> <p>15 Q. Okay. All right. 14:09:38</p> <p>16 So going back to the Incognito definition, you</p> <p>17 used "unknown whose identity is concealed or unavowed."</p> <p>18 Is -- does Google being the identity of an</p> <p>19 Incognito user?</p> <p>20 A. It might. 14:10:04</p> <p>21 Q. Is that information necessarily conveyed to</p> <p>22 Google when a user is browsing the internet in Incognito</p> <p>23 mode on non-Google websites?</p> <p>24 MR. CROSBY: Object to the form.</p> <p>25 THE WITNESS: Again, this is a bit complicated. 14:10:22 Page 110</p>	<p>1 you're browsing the web on your computer, and then later</p> <p>2 you browse the web on your phone, and Google is able to</p> <p>3 link those two browsing sessions to you, and in one of</p> <p>4 them, it knows your identity, now it knows your identity</p> <p>5 in both. It knows they're the same. 14:12:00</p> <p>6 Q. Okay. But in my example, nobody is signed in.</p> <p>7 They're in Incognito, and nobody has signed into the</p> <p>8 website and they haven't signed into their Google domain.</p> <p>9 Have you seen any evidence in this case</p> <p>10 indicating that Google could then correlate the data from 14:12:14</p> <p>11 the private browsing session with data from a regular</p> <p>12 mode browsing session?</p> <p>13 A. I think in some circumstances, they can, yes.</p> <p>14 Q. That's not quite my question, though.</p> <p>15 Have you seen any evidence that Google has 14:12:29</p> <p>16 actually done that?</p> <p>17 A. I have not seen evidence about what Google does.</p> <p>18 Really, my report is about what they could do. So no, I</p> <p>19 have not seen reports from Google that show whether they</p> <p>20 do or do not do these things. 14:12:48</p> <p>21 Q. Okay. So if Google does not do these things, if</p> <p>22 it does not correlate private browsing -- private</p> <p>23 browsing sessions -- data from private browsing sessions</p> <p>24 with data from regular mode sessions, and the user has</p> <p>25 not signed into their account, either at Google or the 14:13:45 Page 112</p>
<p>1 Q. BY MR. BROOME: Uh-huh.</p> <p>2 A. You're asking -- try again. The problem I think</p> <p>3 we're having is that these things might be something that</p> <p>4 Google figures out based on a variety of pieces of</p> <p>5 information. So I need to know really what you're saying 14:10:43</p> <p>6 and is it wholly or is it in parts. So as you phrase the</p> <p>7 question, you know, try to be more precise about what you</p> <p>8 really want to know.</p> <p>9 Q. Sure.</p> <p>10 A. And this is legit complicated. 14:10:56</p> <p>11 Q. Sure. No, it's okay.</p> <p>12 Let me try another example. So user initiates</p> <p>13 an Incognito session. All other settings are default.</p> <p>14 A. Okay.</p> <p>15 Q. The user initiates an Incognito browsing 14:11:09</p> <p>16 session. Goes to The New York Times. Doesn't log in.</p> <p>17 A. Right.</p> <p>18 Q. Goes to The New York Times. Does Google know</p> <p>19 the identity of that user?</p> <p>20 A. Potentially, yes. 14:11:26</p> <p>21 MR. CROSBY: Object to the form.</p> <p>22 Q. BY MR. BROOME: How so?</p> <p>23 A. If they can correlate the user's browsing</p> <p>24 session with other browsing sessions where it knows the</p> <p>25 identity, then it can link those two. So in the same way 14:11:38 Page 111</p>	<p>1 website, in our example The New York Times, does Google</p> <p>2 know the identity of the user?</p> <p>3 MR. CROSBY: Object to the form.</p> <p>4 THE WITNESS: There's a lot of hypothetical</p> <p>5 there. So you're basically saying -- asking me if Google 14:14:00</p> <p>6 chooses not to figure out the identity of the user, do</p> <p>7 they know the user. That's the way...</p> <p>8 Q. BY MR. BROOME: Yeah, that's not how I meant it.</p> <p>9 A. Okay.</p> <p>10 Q. I mean, yeah, if Google -- let me think about 14:14:12</p> <p>11 this.</p> <p>12 Hypothetical: A user launches an Incognito</p> <p>13 window, goes to The New York Times, does not sign into</p> <p>14 any accounts. Assume Google does not correlate private</p> <p>15 browsing data with regular mode data, does Google know 14:14:46</p> <p>16 the identity of the user?</p> <p>17 MR. CROSBY: Object to the form.</p> <p>18 THE WITNESS: You know, I'm not -- I don't have</p> <p>19 access to what Google can do. And what you -- so I'm</p> <p>20 going to re-interpret what you're saying. 14:15:03</p> <p>21 Google chooses not to form the -- what you said.</p> <p>22 Basically you're asking me is there any other way that</p> <p>23 Google could identify the user other than not doing the</p> <p>24 thing they choose not to do. And the answer is I don't</p> <p>25 know. I don't have enough visibility into all of 14:15:22 Page 113</p>

<p>1 collected by companies such as Google by seeking refuge 2 in the promise and expectation of going Incognito online? 3 A. No. 4 Q. All right. Let's go to 86. 5 You say: "In the context" -- in the 15:13:31 6 second-to-last sentence. "And in the context of private 7 browsing, users have specifically signaled that they 8 expect their browsing sessions and the associated content 9 to be in fact private. That data point alone is private 10 in and of itself." 15:13:49 11 Do you see that? 12 A. I do. 13 Q. And the last sentence where you say "that data 14 point alone is private in and of itself," do you mean 15 that the fact that a user is in Incognito mode or private 15:14:00 16 browsing mode should be private? 17 A. You used the word "should." What do you mean be 18 "should"? 19 Q. Or is. I'm not sure. Is -- what -- when you 20 say "that data point," are you saying -- are you 15:14:11 21 referring to -- let me start over. 22 When you refer to "that data point" in the last 23 sentence of paragraph 86, are you -- do you mean the fact 24 that a user is in private browsing mode? 25 A. Yes. 15:14:31 Page 126</p>	<p>1 So the fact that you chose at that moment to 2 browse the web privately is, in fact, private 3 information. 4 Q. Okay. And then -- so if private browsing modes 5 were redesigned to indicate every time -- you know, to 15:16:23 6 websites every time somebody is in a private browsing 7 mode, do you think that would be a good thing or a bad 8 thing? 9 A. There's no question because it's mixed. Do I 10 want to tell The New York Times when I'm browsing 15:16:40 11 privately or not; right? So I'm designing off the top of 12 my head so do not take someone's random designs like 13 off-the-cuff as final. 14 I'd want to give users the choice of signaling 15 or not. But then, you know, on the other hand, you know, 15:17:00 16 is a user going to be sophisticated enough to be able to 17 do that well. That's going to be your balance. 18 But I can imagine times when I would want to 19 signal that and times when I wouldn't. 20 Q. If Google sent an email to a user, Google 15:17:35 21 account holder, and said -- that conveyed, you know, 22 this -- your device was used to browse in private, and 23 let's assume that device is a shared device, does that in 24 and of itself constitute an invasion of privacy? 25 A. So you're asking me if Google sends an email to 15:18:07 Page 128</p>
<p>1 Q. Okay. Next question: Do you -- is it your 2 opinion that the fact that a user is in Incognito mode 3 should be private? 4 A. So "should" is a hard -- is a tough word. When 5 you say "should," under what -- where does that "should" 15:14:48 6 come from? Should implies someone is making a judgment. 7 Q. Uh-huh. Okay. Do you think users have a 8 reasonable expectation of privacy in the fact that 9 they're in a private browsing mode? 10 A. I don't know. That's very different than 15:15:08 11 "should." 12 Q. So when you say that data point is private, what 13 do you mean? Do you mean -- are you talking about the 14 fact that browsers are designed not to indicate that the 15 user is in private browsing mode? 15:15:29 16 A. What I mean is that when a user signals that 17 they're wanting to go into a private browsing session, 18 that they want to do something on the internet and that 19 they don't want observed. 20 Q. I see. 15:15:44 21 A. The fact that they are doing that, that signal 22 is private information. I mean, if I know you did that 23 last Thursday at 4:00 p.m., and I then correlated with 24 what you were doing, I had your billing records from your 25 firm, I know your location data. 15:16:01 Page 127</p>	<p>1 your personal Gmail account -- 2 Q. Uh-huh. 3 A. -- and you access on a shared browser, does that 4 constitute an invasion of privacy? Am I reframing your 5 question right? 15:18:24 6 Q. Yeah, I think so. 7 A. I think it doesn't. 8 Q. And why is that? 9 A. It doesn't feel like it does. 10 Q. Well, it might not be you that was doing the 15:18:36 11 private browsing; right? 12 A. But it's my Gmail account. So wait, wait, wait 13 a second. So, yeah. See, this is why you do not accept 14 design decisions off the cuff in conversation; right? 15 Q. Fair enough. 15:18:52 16 A. Because it's all of this stuff. Stuff you have 17 to think about it, you've got to write it down and look 18 at the flows. Guess I would back off and say I don't 19 know. I'd need to think about it because you're right, 20 that is something you would have to consider. 15:19:09 21 Q. All right. Well, let's put it this way in more 22 general terms. 23 If Google alerted the owner of a shared device 24 that the other-- that someone else who uses that device 25 had been browsing in private, that in and of itself would 15:19:24 Page 129</p>

<p>1 be a privacy violation; right?</p> <p>2 A. Well, let's give an example. I am an abusive</p> <p>3 husband. We have a shared computer. My wife used</p> <p>4 private browsing. I got an email. I suspect she gets</p> <p>5 beat up over this. It feels like a privacy violation. 15:19:40</p> <p>6 Q. Okay. 87. You say: "When browsing the</p> <p>7 internet people often start on a search page and then</p> <p>8 click from that page to other websites. For example,</p> <p>9 someone might start with a Google search, then visit a</p> <p>10 non-Google website based on those search results. 15:20:11</p> <p>11 Information tied to that search term and subsequent</p> <p>12 browsing, including individual URLs and the record of an</p> <p>13 entire browsing session reveals a great deal of personal</p> <p>14 information about an individual."</p> <p>15 Do you see that? 15:20:24</p> <p>16 A. I do.</p> <p>17 Q. Would you agree that many people do not start</p> <p>18 their private browsing sessions by going and conducting a</p> <p>19 Google search?</p> <p>20 A. I don't have the data on that so I wouldn't 15:20:45</p> <p>21 necessarily agree to that.</p> <p>22 Q. Okay. Well, would you agree that if you want to</p> <p>23 keep your private browsing activity private from Google,</p> <p>24 then beginning your private browsing session with a</p> <p>25 Google search is probably not a good way to go about it? 15:21:01</p> <p style="text-align: right;">Page 130</p>	<p>1 A. Probably. Again, you know, it would take us a</p> <p>2 while to eliminate all circumstances. The one that came</p> <p>3 to mind, which I'm now wondering about, if you call 911</p> <p>4 on your smartphone, you know, and for some reason the</p> <p>5 call disconnected, it would be great if I could 15:23:24</p> <p>6 fingerprint your device and know your location</p> <p>7 immediately.</p> <p>8 Now thinking about that more, that's an invasion</p> <p>9 of privacy. It's one that will be welcome by the person</p> <p>10 who's being attacked and their cell phone is ripped out 15:23:35</p> <p>11 of their hands, but you know, there are always edge</p> <p>12 cases. So I hesitate to make -- to make those</p> <p>13 categoricals without really thinking about edge cases.</p> <p>14 Q. Okay. Does fingerprinting identify an</p> <p>15 individual or does it identify a device? 15:23:55</p> <p>16 A. Fingerprinting identifies a device, which -- and</p> <p>17 devices can identify individual.</p> <p>18 Q. Right. And would you agree that with this</p> <p>19 statement, this is from -- well --</p> <p>20 Just confirming something with my colleague. 15:24:30</p> <p>21 Devices may identify an individual, but they may</p> <p>22 just identify -- they may not. Is that --</p> <p>23 A. They may not. I mean, something we're learning</p> <p>24 over the past few years, it's easier than we thought to</p> <p>25 go from a device to an individual. 15:24:49</p> <p style="text-align: right;">Page 132</p>
<p>1 A. I certainly wouldn't do it, but you didn't ask</p> <p>2 me what I do. I'm three sigma.</p> <p>3 Q. Paragraph 84. You refer to fingerprinting</p> <p>4 techniques.</p> <p>5 A. Uh-huh. 15:21:56</p> <p>6 Q. Have you seen any evidence that Google has</p> <p>7 engaged in fingerprinting in this case?</p> <p>8 A. Yeah, I read internal documents that talk about</p> <p>9 fingerprinting and internal Google documents, but I don't</p> <p>10 think they actually said we do this particular practice. 15:22:19</p> <p>11 And other than that, no.</p> <p>12 Q. Would you agree that fingerprinting should</p> <p>13 generally be avoided?</p> <p>14 A. See, that's a hard question. You're back to</p> <p>15 "should generally be," by whom. Maybe your at the NSA, 15:22:37</p> <p>16 you want to do it; right? It's your job. That's what</p> <p>17 you get paid for. I might not like it personally. So</p> <p>18 who should be avoiding it?</p> <p>19 Q. No, that's a fair response. Let me ask it</p> <p>20 slightly differently. 15:22:54</p> <p>21 Would you agree that fingerprinting is an</p> <p>22 invasion of privacy?</p> <p>23 A. I think that device fingerprinting can be, yes.</p> <p>24 Q. Okay. Are there circumstances under which it</p> <p>25 would not be an invasion of privacy? 15:23:05</p> <p style="text-align: right;">Page 131</p>	<p>1 Q. In paragraph -- I'm sorry, in footnote 88, you</p> <p>2 say this article that you and Karen Levy wrote together?</p> <p>3 A. Yes.</p> <p>4 Q. Privacy Threats in Intimate Relationships?</p> <p>5 A. Yes. 15:25:20</p> <p>6 Q. And in that article, I think it's at page 10. I</p> <p>7 can show you the article, if you like. But we'll see if</p> <p>8 you need it.</p> <p>9 You say: "Households are not units, devices are</p> <p>10 not personal, the purchaser of a product is not its only 15:25:29</p> <p>11 user."</p> <p>12 Do you agree with those statements?</p> <p>13 A. Can I see it in situ.</p> <p>14 Q. Absolutely. Totally fair.</p> <p>15 A. Just to see it. Just to make sure. 15:25:40</p> <p>16 MR. BROOME: Yeah.</p> <p>17 (Exhibit 7, Journal of Cybersecurity, Research</p> <p>18 Paper, Privacy Threats in Intimate</p> <p>19 Relationships, by Karen Levy and Bruce Schneier,</p> <p>20 was marked for identification by counsel</p> <p>21 electronically.)</p> <p>22 THE WITNESS: Okay. I'm there.</p> <p>23 Q. BY MR. BROOME: Let me load it.</p> <p>24 A. The words sound familiar. Remind me where it</p> <p>25 is. 15:26:02</p> <p style="text-align: right;">Page 133</p>

<p>1 Q. So we've loaded Exhibit 7, which is your article 2 Privacy Threats in Intimate Relationships, which you 3 coauthored with Karen Levy; is that accurate?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And let's see. First of all, on page 2, 15:26:13 6 bottom left, very last sentence beginning in the 7 left-hand column on page 2. It says: "People living in 8 the same household may share computers, phones, and other 9 connected devices."</p> <p>10 Do you see that? 15:26:31</p> <p>11 A. That was a long page. Yes, I do see it.</p> <p>12 Q. Okay. And do you agree with that?</p> <p>13 A. Yes.</p> <p>14 Q. And then if you go to -- skip ahead to page 10.</p> <p>15 A. I'm there. 15:26:48</p> <p>16 Q. Okay. Right in the heading there, Implication 6 17 says: "Realize that households are not units; devices 18 are not personal; the purchaser of a product is not its 19 only user."</p> <p>20 A. Yes. 15:27:24</p> <p>21 Q. And I had asked you if you agreed with that. Do 22 you agree with that?</p> <p>23 A. So that is a -- an implication. So what that's 24 saying is that those things are not always true. I mean, 25 it's a person over a product is often its only user in 15:27:36 Page 134</p>	<p>1 Q. It says: "I have my browser configured to 2 delete my cookies every time I close it, which I do 3 multiple times a day. I am still being surveilled, but 4 now it's much harder to tie all those small surveillances 5 back to me and ads don't follow me around." 15:29:54</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Why did you configure your browser setting to 9 delete cookies every time you close your browser?</p> <p>10 A. It's an easy thing to do, and I think it -- it 15:30:04 11 helps block surveillance in some cases.</p> <p>12 Q. Does it provide some degree of privacy?</p> <p>13 A. I think it provides some degree of privacy, yes.</p> <p>14 Q. Privacy from internet tracking companies?</p> <p>15 A. Yes. 15:30:21</p> <p>16 Q. Privacy from Google?</p> <p>17 A. You know, I've learned a lot more about Google 18 tracking than I knew in 2014 so I'm not sure. You know, 19 these days I think Google is able to join to various 20 sessions of mine, or at least some of them. 15:30:37</p> <p>21 Q. Right. But you haven't seen any evidence that 22 Google's actually done that; correct?</p> <p>23 A. No, but I think it would be a bad business model 24 if they didn't. I mean, I can see what they talk about 25 in their writings to analytics customers. For me, it's 15:31:08 Page 136</p>
<p>1 the example of a smartphone. So I mean, that's shortened 2 because it's the title of a section so there's a bunch of 3 caveats missing.</p> <p>4 Q. Okay. But as a general matter, you would agree 5 that households are not units and devices are not -- 15:27:57 6 households are not necessarily units and devices are not 7 necessarily personal?</p> <p>8 A. Yes. As a design assumption.</p> <p>9 Q. Okay.</p> <p>10 A. That's who I'm speaking to. I'm speaking to 15:28:12 11 designers of systems.</p> <p>12 Q. Right. And well, you're speaking to designers 13 of systems, and this is a design assumption, but it is a 14 design assumption that is a -- has a real-world practical 15 application; right? 15:28:30</p> <p>16 A. Yes.</p> <p>17 Q. All right. Okay.</p> <p>18 Can we go back to your Data and Goliath book for 19 a moment. I think that was 3, Exhibit 3. Page 217 in 20 the book, page 155 in the PDF. 15:29:08</p> <p>21 A. I'm here.</p> <p>22 Q. There's a heading that says "Distort 23 Surveillance."</p> <p>24 Do you see that?</p> <p>25 A. I do. 15:29:37 Page 135</p>	<p>1 something prudent to do. It's easy to do and provides me 2 some measure.</p> <p>3 Q. I asked whether you'd seen any evidence that 4 Google's actually done that, and you said no. Just so 5 the record is clear, your answer is no, I have not seen 15:31:23 6 any evidence that Google's actually done that; is that 7 right?</p> <p>8 A. No. I'm not privy to Google's actual data 9 surveillance practices.</p> <p>10 Q. Okay. I think we got another record problem 15:31:38 11 because I said "is that right," and you said "no."</p> <p>12 A. Yeah.</p> <p>13 Q. Let me ask the question again.</p> <p>14 Have you seen any evidence that Google is able 15 to join the various sessions? 15:32:06</p> <p>16 A. Yes.</p> <p>17 Q. No, wait. That's not what I meant to ask.</p> <p>18 Have you seen any evidence that Google has 19 actually joined the various sessions?</p> <p>20 A. No. 15:32:22</p> <p>21 Wait. Counsel's evidence; right? So we have 22 the deposition of the FBI agent that said speaks to 23 linking private browsing and non-private browsing. 24 Right? We have that article by Sara Watson, of her 25 questioner, who says I was browsing Incognito and the ad 15:32:50 Page 137</p>

<p>1 followed me around.</p> <p>2 So I think the answer is I've seen a bunch of</p> <p>3 anecdotal evidence, but no direct evidence.</p> <p>4 Q. In this paragraph here where you talk about</p> <p>5 deleting -- configuring your browser to delete your 15:33:19</p> <p>6 cookies every time you close it, you refer to small</p> <p>7 surveillances. What did you mean by that?</p> <p>8 A. I need to look at it.</p> <p>9 I think what I mean is temporally small. So</p> <p>10 imagine I'm deleting my cookies -- I'm going to make this 15:33:38</p> <p>11 up -- every four hours. So each block that that cookie</p> <p>12 knows is a four-hour block. I meaning of small that way.</p> <p>13 So four hours, four hours, four hours; right? So it's</p> <p>14 now harder to join those three separate units.</p> <p>15 Q. So the surveillance -- surveillances would be 15:33:59</p> <p>16 the websites you visited in your other activity online?</p> <p>17 A. Yes.</p> <p>18 Q. And they're small because they're going to be</p> <p>19 limited from the time you -- or to the time between when</p> <p>20 you start the session and the time you delete the 15:34:18</p> <p>21 cookies; is that what you're saying?</p> <p>22 A. Yeah, that's correct. And remember, this is</p> <p>23 also written in 2014. I think we're a lot less</p> <p>24 sophisticated on what else different companies could do,</p> <p>25 certainly what Google and other companies, also. 15:34:32</p> <p style="text-align: right;">Page 138</p>	<p>1 true, yes.</p> <p>2 Q. In fact, any Google service that exists on a</p> <p>3 website is only there because the website wants it to be</p> <p>4 there; right?</p> <p>5 A. I don't know all of the Google services. So if 15:36:31</p> <p>6 you find me one that isn't, I wouldn't be shocked.</p> <p>7 Q. Fair -- fair point.</p> <p>8 With respect to the services that are at issue</p> <p>9 in this case, those cases, Google's analytics and</p> <p>10 advertising services are only there because the website 15:36:47</p> <p>11 wants them to be there; correct?</p> <p>12 A. Yes, yes.</p> <p>13 Q. Do you agree that a private browsing mode</p> <p>14 session could be limited to just a single website?</p> <p>15 A. Yes. 15:37:52</p> <p>16 Q. In paragraph -- if you go to paragraph 201 of</p> <p>17 your report.</p> <p>18 A. Uh-huh.</p> <p>19 Q. Okay. It says: "While Google can present</p> <p>20 cookie tracking as a necessary part of the internet, this 15:39:13</p> <p>21 is simply not the case. In fact, there exists a widely</p> <p>22 proposed protocol (supported in every major browser,</p> <p>23 including Chrome) called 'Do Not Track.' This is a</p> <p>24 signal that can be sent in a HTTP header to a website,</p> <p>25 asking that the site to not track this user, browser, or 15:39:29</p> <p style="text-align: right;">Page 140</p>
<p>1 Q. And you understand that this is how Incognito</p> <p>2 mode and other private browsing modes work; right? That</p> <p>3 they delete cookies when you close the browser?</p> <p>4 A. Yes.</p> <p>5 Q. And therefore, they do provide a measure of 15:34:54</p> <p>6 privacy; correct?</p> <p>7 A. I believe I've said that, yes.</p> <p>8 Q. Paragraph 99. You use the term "eavesdroppers"</p> <p>9 there. Do you see that?</p> <p>10 A. Yes. 15:35:32</p> <p>11 Q. And do you think that's a fair characterization</p> <p>12 of companies that provide these web services, given that</p> <p>13 they're only there because the websites want them to be?</p> <p>14 A. Which web services are you referring to?</p> <p>15 Q. Well, for example, Google Analytics and Google 15:35:46</p> <p>16 Ad Manager.</p> <p>17 A. I think it is in the same way to say</p> <p>18 surveillance is -- on the internet. Someone can eaves-</p> <p>19 -- they are. Yes. I mean, in this, I'm -- yeah, I do</p> <p>20 think it is a -- a fair characterization. 15:36:03</p> <p>21 Q. Okay. Well, you would agree that the reported</p> <p>22 eavesdroppers are only there because the websites want</p> <p>23 them to be; right?</p> <p>24 A. In the case of Google Analytics, that is true.</p> <p>25 Actually, in the case of a lot of the trackers that is 15:36:20</p> <p style="text-align: right;">Page 139</p>	<p>1 request. Chrome has this feature, which is buried within</p> <p>2 the settings menu, and is turned off by default. Any</p> <p>3 sensible 'incognito' or truly 'private' mode would enable</p> <p>4 this feature by default."</p> <p>5 Do you see that? 15:39:48</p> <p>6 A. I do.</p> <p>7 Q. Okay. Do any other private browsing modes --</p> <p>8 well, let me make that more limited.</p> <p>9 Do any of the private browsing modes that are at</p> <p>10 issue in this case enable Do Not Track by default? 15:39:59</p> <p>11 A. I don't know, but I do say that Brave prompts</p> <p>12 users to turn it on. So that's not a default, but it</p> <p>13 is -- it's a pattern that will incent users to turn it</p> <p>14 on.</p> <p>15 Q. Is Brave at issue in this case? Do you know 15:40:22</p> <p>16 which browsers other than Incognito are -- sorry, which</p> <p>17 browsers other than Chrome are at issue in this case?</p> <p>18 A. I do, but I always get them wrong and look it</p> <p>19 up.</p> <p>20 Q. That makes two of us. 15:40:34</p> <p>21 A. Yeah. So look it up if we need it.</p> <p>22 Q. Yeah, I think it's Safari and Edge.</p> <p>23 A. Safari and -- not Firefox -- and Edge. I think</p> <p>24 that's right. Edge is the Microsoft one.</p> <p>25 Q. Okay. Do you know whether Safari or Microsoft 15:40:51</p> <p style="text-align: right;">Page 141</p>

<p>1 of Service Chrome policy -- Privacy Policy -- excuse 2 me -- and Chrome Privacy Notice. And you say -- you talk 3 about the amount of time it would take to read all of 4 those documents, all versions of all of those documents. 5 Do you see that? 15:57:31 6 A. I do. 7 Q. And then you say: "This estimated reading time 8 assumes the reader is capable of comprehending the text, 9 which in many cases is unlikely unless the reader happens 10 to be an attorney." 15:57:46 11 You've read Google's Privacy Policy; right? 12 A. I have. 13 Q. Okay. And have you read the various versions 14 that are in effect during the class period? 15 A. You know, I read some and skimmed the others. I 15:57:57 16 didn't read every word of every one. 17 Q. Is it your opinion that you need to be an 18 attorney to understand the -- Google's Privacy Policy? 19 A. No. 20 Q. Okay. Is it your opinion that you'd need to be 15:58:09 21 an attorney to understand the Chrome Privacy Notice? 22 A. No. 23 Q. Well, what about the Terms of Service? 24 A. No. 25 Q. In 239, you say "the time span between revisions 15:58:22 Page 150</p>	<p>1 has to be. 2 Q. Okay. In 241, it looks like you subjected 3 the -- these various Google documents to a Flesch Reading 4 Ease score or a Reading Ease test, I guess? 5 A. Yes. 16:00:55 6 Q. Okay. Do you have any expertise in readability? 7 A. I do not. So I used the test. 8 Q. Okay. Have you ever used these tests before? 9 A. I have. Not often, but I have run a writing of 10 mine through it occasionally just to see. 16:01:16 11 Q. Okay. And your results showed that generally 12 people with a high school diploma should be able to 13 understand these various Google disclosures; right? 14 A. You know, what it says is the education needed. 15 So it gives a minimum that needed. You know, you said if 16:01:39 16 someone above that should be able to. That's going to 17 have a lot of other elements besides just readability. 18 Q. Okay. Section 10.2, paragraph 243. Let me know 19 when you're there. 20 A. I'm there. 16:02:18 21 Q. Okay. You opine that Google promises users 22 control. 23 Do you see that? 24 A. Yes. 25 Q. Is it your opinion that Google does not deliver 16:02:24 Page 152</p>
<p>1 of these policies has been quite short, with as many as 2 four revisions issued in the space of a year. Take, for 3 example, revisions to the Privacy Policy." And then you 4 go on and note that it's been updated. 5 You would agree that Google should update its 15:58:38 6 Privacy Policy as frequently as necessary to make it 7 accurate; right? 8 A. Yes. 9 Q. Okay. So as technologies change or as laws 10 change or practices change, Google should update its 15:58:53 11 Privacy Policy to be current; correct? 12 A. Yes. 13 Q. Okay. And the length of those policies should 14 be essentially as long as they need to be to convey the 15 relevant information. 15:59:26 16 Do you agree with that? 17 A. Yes. 18 Q. And do you agree that it is hard -- when 19 crafting privacy policies, it's difficult to strike a 20 balance between disclosing too much information or 15:59:40 21 disclosing information in such detail that users won't 22 understand it and providing the information in a way that 23 is simple and digestible to the average consumer? 24 A. I'm not convinced that that balance is that hard 25 to strike. I think a bigger deal is made of it than it 16:00:01 Page 151</p>	<p>1 on that promise? 2 A. Yeah. 3 Q. How so? 4 Well, actually, strike that. Let me ask you 5 another question first. 16:02:41 6 Are you saying that Google offers users no 7 control? 8 A. No. 9 Q. Google does offer users some control; correct? 10 A. Yes. 16:02:51 11 Q. There are various settings that Google offers 12 across its services that give users control; correct? 13 A. Yes. 14 Q. The word "control" can mean a lot of different 15 things depending on context; correct? 16:03:17 16 A. Yes. 17 Q. Control is a measure of degree; right? 18 A. Yes. 19 Q. You can have some control or you can have total 20 control? 16:03:29 21 A. Yes. 22 Q. Do you agree that by providing a cookie blocker 23 option in Chrome, Google provides users some control? 24 A. Yes. 25 Q. Do you agree that by allowing users to delete 16:03:41 Page 153</p>

<p>1 data associated with their account in My Activity, users 2 provides -- sorry, Google provides users control? 3 A. You went from some control to control. Do you 4 mean to do that? 5 Q. No. That got all muddled. 16:03:56 6 Do you agree that by allowing users to delete 7 data associated with their account in My Activity, Google 8 provides users control? 9 MR. CROSBY: Object to the form. 10 THE WITNESS: Google provides users some control 16:04:08 11 by doing that. And that's a tough one because we're 12 pretty sure that Google doesn't allow you to delete the 13 backups. You know, there are lots of cases in other 14 companies where you delete your data and you change your 15 mind, it comes back. So when deleted data is truly data 16:04:24 16 is an open question. 17 Q. BY MR. BROOME: Do you agree that by providing a 18 browser mode that allows the user to be either signed in 19 or signed out, Google provides users some control? 20 A. Yes. 16:04:45 21 Q. Do you agree that by providing a browser mode 22 that prevents the sharing of existing cookies with 23 websites, Google provides the user with some control? 24 A. And I'm taking it as read that Google actually 25 does this; right? Because I have no direct knowledge. 16:04:59 Page 154</p>	<p>1 had control over Google's collection of their information 2 with users being able to exercise control by using 3 private browsing." 4 Do you see that? 5 A. I do. 16:27:14 6 Q. And then you cite the various Google privacy 7 policies in effect during the class period. 8 Do you see that? 9 A. I do. 10 Q. Okay. And that begins in June -- looks like the 16:27:23 11 first one you cite there is June 2016? 12 A. Yes. 13 Q. But you know that Google did not mention 14 Incognito mode or private browsing in the Privacy Policy 15 until 2018; right? 16:27:41 16 A. Yes. 17 Q. So why did you say that Google's Privacy Policy 18 throughout the class period promised users had control 19 over Google's collection of their information, with users 20 able to exercise control by using private browsing? Was 16:27:57 21 that a mistake? 22 A. That's interesting. You're saying -- and I 23 remember that; I'm not going to check. We'll say that 24 you say it's right -- that in those older ones, they 25 don't mention private browsing at all. 16:28:18 Page 156</p>
<p>1 Q. Yes. 2 A. And this would be in Chrome? 3 Q. Yes. 4 A. Yes, that it gives users some control. 5 Q. And do you agree that a browser mode that 16:05:09 6 deletes cookies automatically when you close it provides 7 users some control? 8 A. Yes. 9 MR. BROOME: Why don't we take a short break. 10 I'm just going -- we're sort of at the point -- well, 16:05:50 11 let's go off the record for a second, if that's okay. 12 MR. CROSBY: Sure. 13 THE VIDEOGRAPHER: Going off the record at 14 4:06 p.m. 15 (Recess.) 16:06:33 16 THE VIDEOGRAPHER: We are back on the record at 17 4:26 p.m. 18 Q. BY MR. BROOME: Mr. Schneier, can you please 19 turn to paragraph 279 of your report. 20 A. Yeah, let me turn the light on here. It will be 16:26:41 21 a little better for me. 22 Q. Okay. 23 A. I'm here. 24 Q. Okay. Paragraph 279, you say: Google's Privacy 25 Policy throughout the class period promised that users 16:27:04 Page 155</p>	<p>1 Q. Right. 2 A. Then the Privacy Policy would not say that users 3 are able to exert control using private browsing. The 4 Privacy Policy is silent on that, yes. But yet it's 5 silent both ways. 16:28:44 6 So, you know, if I was a Google user who might 7 want to use private browsing and let's say I want to 8 check the Privacy Policy, it's not going to tell me 9 either way. So, you know, I would just default to the 10 other things I'm told. 16:28:56 11 Q. Well, or the Privacy Policy would say we collect 12 this data, and describe all the data we collect, and it 13 wouldn't distinguish between regular or private browsing; 14 right? 15 A. Right. And that would be an omission so that 16:29:10 16 the design -- if you think about it, so that's an 17 omission. It's silent about that. Silent about the 18 difference. So you're postulating, well, that a user 19 would know that it's the same, but if a user's getting 20 information from Google executives, from Google splash 16:29:30 21 screens, thinking one -- thinking -- coming in thinking a 22 certain thing, and they're not being contradicted, it 23 seems more likely to me that they're going to leave with 24 the same impression they came in with. 25 Q. Okay. So if they came in with -- already came 16:29:50 Page 157</p>

<p>1 categorically say they're not speaking to -- to this, to 2 see what they say about other Google services that you 3 might use.</p> <p>4 Now this is saying you can choose a browser 5 using Chrome or Incognito mode, but it doesn't say 16:41:02 6 anything about other browsers. You don't even know they 7 exist if you just read this paragraph.</p> <p>8 Q. Okay. All right.</p> <p>9 Paragraph 283, you write: "Google's Chrome 10 Incognito Splash Screen has also promised privacy without 16:41:33 11 ever disclosing that Google collects users' private 12 browsing activity. Pairing the term Incognito with an 13 icon of a faceless person in disguise suggests that a 14 user in Incognito mode cannot be seen, traced, or tracked 15 while browsing online." 16:41:53</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Are you an expert in iconography?</p> <p>19 A. I am not.</p> <p>20 Q. What expertise did you bring -- did you apply in 16:42:00 21 reaching this conclusion about pairing a term with a 22 particular icon?</p> <p>23 A. This is the expertise of me as a security and 24 privacy expert's understanding disclosures, understanding 25 dark patterns. Also relevant were the comments from 16:42:21</p> <p style="text-align: right;">Page 166</p>	<p>1 (Discussion off the record.)</p> <p>2 THE WITNESS: I said, "Unless it's an 3 invisibility suit," which is actually not a useful aside.</p> <p>4 Q. BY MR. BROOME: A disguise doesn't mean that a 5 user can't be traced; right? 16:44:45</p> <p>6 A. That is correct.</p> <p>7 Q. Or a disguise doesn't mean a user can't be 8 tracked; right?</p> <p>9 A. That is correct.</p> <p>10 Q. And as we discussed earlier, it means that a 16:44:58 11 person's identity is concealed; correct?</p> <p>12 A. That is correct. Although let's back up. If a 13 disguise is -- you know, you're disguised as a minion in 14 a sea of a thousand minions, you're not going to be 15 traced or tracked. 16:45:15</p> <p>16 So there are disguises which will prevent 17 tracing and tracking. They would be -- you know, a 18 disguise among everybody else. You know, let's go back 19 to the Tor browser. That's how that works. You are 20 amongst everybody else, and that's why you can't be 16:45:29 21 traced or tracked.</p> <p>22 Q. Let's take a look at paragraph 293.</p> <p>23 A. Uh-huh.</p> <p>24 Q. You say that: "Users may seek privacy and 25 anonymity when searching and browsing non-Google websites 16:46:07</p> <p style="text-align: right;">Page 168</p>
<p>1 Google employees saying that, hey, you know, this icon is 2 misleading.</p> <p>3 Q. Okay. And if we just limit it to your 4 expertise, all right, have you ever analyzed an icon 5 before to determine what, you know, message it sends to 16:42:42 6 consumers?</p> <p>7 A. How would you analyze an icon?</p> <p>8 Q. How did you analyze the icon in this particular 9 case?</p> <p>10 A. It's -- I think I've answered that. It's, you 16:42:56 11 know, based on what I know about the word, the images, 12 pairing, and you know, what we as security and privacy 13 professionals understand to be adequate disclosures.</p> <p>14 Q. Have you ever applied that expertise to an icon 15 before? 16:43:18</p> <p>16 A. Almost certainly.</p> <p>17 Q. Can you think of that example?</p> <p>18 A. I'm working on it. Nothing comes to mind, but 19 not promising I won't think of something as we go.</p> <p>20 Q. Okay. Okay. You describe the icon as a 16:43:36 21 faceless person in disguise. A disguise doesn't mean 22 you're invisible; right?</p> <p>23 A. It does not.</p> <p>24 MR. BROOME: All right. I think I interrupted 25 you there. 16:44:00</p> <p style="text-align: right;">Page 167</p>	<p>1 for information about ways to deal with or exit from an 2 abusive relationship. As discussed previously, abusers 3 often employ technological knowledge and means to control 4 their victims, including inspecting a shared computer or 5 their victim's computer or phone to spy on their online 16:46:23 6 activity. If detected by a tech-savvy abuser, searches 7 and the subsequent browsing activities tied to the 8 following searches could lead to domestic violence," and 9 you list a number of searches people might have run.</p> <p>10 Do you see that? 16:46:39</p> <p>11 A. I do.</p> <p>12 Q. Okay. How tech savvy would one need to be to 13 figure out somebody's Incognito searches, assuming the 14 user closes their Incognito sessions when they're done?</p> <p>15 A. So I haven't done forensic work in Google Chrome 16:46:54 16 and Incognito so I cannot answer that question.</p> <p>17 Q. Okay. I mean, sitting here today, are you aware 18 of any way that somebody outside of Google could 19 determine somebody's Incognito browsing or searches?</p> <p>20 A. Off the top of my head, I can think of a key 16:47:14 21 logger as one.</p> <p>22 Q. Okay. That's a third-party software?</p> <p>23 A. Software or hardware. You can use them both 24 ways.</p> <p>25 Q. That would record all of the key strokes on the 16:47:29</p> <p style="text-align: right;">Page 169</p>

<p>1 device; right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Regardless of whether they're in</p> <p>4 Incognito or not; right?</p> <p>5 A. Yes. 16:47:37</p> <p>6 Q. Okay. So let's assuming -- let's assume the</p> <p>7 abuser is not particularly tech savvy. Incognito should</p> <p>8 prevent the abuser from finding -- from identifying the</p> <p>9 searches that somebody ran in Incognito?</p> <p>10 A. If it doesn't, we have some serious problems 16:47:56</p> <p>11 here. So let's assume it does.</p> <p>12 Q. Okay.</p> <p>13 MR. CROSBY: I'm sorry, I was on mute. I</p> <p>14 objected to the form of the question.</p> <p>15 Q. BY MR. BROOME: And I think we sort of touched 16:48:13</p> <p>16 on this earlier, but if one engaged in a fingerprinting</p> <p>17 analysis to identify this device as one that is engaged</p> <p>18 in private browsing, and then emailed the owner of that</p> <p>19 device, in this example, the abusive spouse, that it was</p> <p>20 used for private browsing, that might alert the abusive 16:48:33</p> <p>21 spouse that his wife had been doing research in private</p> <p>22 browsing mode to conceal something from him; right?</p> <p>23 A. Yes.</p> <p>24 Q. And that's a really legitimate concern; right?</p> <p>25 A. I think it is, yes. 16:48:48</p> <p style="text-align: right;">Page 170</p>	<p>1 to you."</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. And in fact, as far as you know, Google does not</p> <p>5 link any private browsing activity to individual users; 16:50:47</p> <p>6 correct?</p> <p>7 A. I know they can. I don't know if they actually</p> <p>8 do that.</p> <p>9 Q. Okay.</p> <p>10 A. We have a lot of incidental antidotes that they 16:50:57</p> <p>11 do.</p> <p>12 Q. Okay. So far as you know, Pachai's statement</p> <p>13 was accurate; right?</p> <p>14 A. No, I think it's inaccurate.</p> <p>15 Q. And why is that? 16:51:14</p> <p>16 A. I think for the reasons I talk about in the rest</p> <p>17 of that paragraph.</p> <p>18 Q. Okay. Let's look at that. You say: "Pichai's</p> <p>19 statement was incorrect in implying that while in</p> <p>20 Incognito mode, data regarding a user's browsing activity 16:51:28</p> <p>21 is not saved or linked to them, when in fact data is</p> <p>22 continuously collected from Chrome users whether they are</p> <p>23 browsing in normal or in Incognito mode."</p> <p>24 Do you see that?</p> <p>25 A. I do. 16:51:42</p> <p style="text-align: right;">Page 172</p>
<p>1 Q. Do you have an opinion as to whether the</p> <p>2 branding and marketing messages of other private browsing</p> <p>3 modes is misleading? Other meaning other than Incognito</p> <p>4 mode.</p> <p>5 A. I did not look at them in relation to this case. 16:49:05</p> <p>6 And that's not something I pay attention to. So right</p> <p>7 now, I don't.</p> <p>8 Q. You're a Firefox user; right?</p> <p>9 A. I am.</p> <p>10 Q. Have you ever used Edge? 16:49:15</p> <p>11 A. I have never used Edge.</p> <p>12 Q. In Firefox, do you ever use Incognito or their</p> <p>13 equivalent private browsing mode?</p> <p>14 A. I do not.</p> <p>15 Q. And why is that? 16:49:28</p> <p>16 A. Can you say asked and answered?</p> <p>17 Q. Is it because you don't have any shared</p> <p>18 computers?</p> <p>19 A. That's right.</p> <p>20 Q. Okay. Would you turn to paragraph 311. 16:49:37</p> <p>21 A. Uh-huh.</p> <p>22 Q. You write: "In May 2019, Google's CEO Sundar</p> <p>23 Pichai wrote an op-ed in The New York Times in which he</p> <p>24 described Incognito mode as a 'popular feature in Chrome</p> <p>25 that lets you browse the web without linking any activity 16:50:31</p> <p style="text-align: right;">Page 171</p>	<p>1 Q. Pichai doesn't say that data's not saved; right?</p> <p>2 A. No. They say that he says that you can browse</p> <p>3 the web without linking any activity to you.</p> <p>4 Q. Right.</p> <p>5 A. He's not saying that explicitly, but he's making 16:51:55</p> <p>6 a statement that when you browse the web using Incognito,</p> <p>7 data's not linked to you. And we know that data has been</p> <p>8 linked to people browsing in Incognito.</p> <p>9 Q. And you're talking about the antidotes that</p> <p>10 you've heard? 16:52:13</p> <p>11 A. Well, that have been testified to. More than</p> <p>12 I've heard.</p> <p>13 Q. Right. You're talking about the antidotes</p> <p>14 discussed in the testimony in this case?</p> <p>15 A. Yes. 16:52:24</p> <p>16 Q. Okay.</p> <p>17 MR. CROSBY: I'm sorry, could we take a real</p> <p>18 quick five-minute break here, please.</p> <p>19 MR. BROOME: Sure.</p> <p>20 MR. CROSBY: Thank you. 16:52:36</p> <p>21 THE VIDEOGRAPHER: Going off the record at</p> <p>22 4:53 p.m.</p> <p>23 (Recess.)</p> <p>24 THE VIDEOGRAPHER: We are back on the record at</p> <p>25 5:03 p.m. 17:03:20</p> <p style="text-align: right;">Page 173</p>

<p>1 combined with everything else on the splash screen and 2 what users are hearing from Google say that. 3 (Telephonic interruption.) 4 THE WITNESS: It's totally not me. 5 Q. BY MR. BROOME: You don't think that people who 17:11:24 6 read the splash screen think the phrase "other people who 7 use this device" refers to Google, do you? 8 MR. CROSBY: Object to the form. 9 Q. BY MR. BROOME: Are you there? 10 A. I'm there. I'm looking at it. 17:11:43 11 Q. Okay. 12 A. That is a clause in a bigger sense. You can -- 13 you can browse the web privately, and other people use 14 this device. So that clause I think is about other 15 people who are touching the physical object that you're 17:11:55 16 on. You can browse privately is a more general 17 statement. And then there's a -- there's a caveat which 18 is the next sentence. 19 Q. Yeah. I'm just referring to the clause. 20 Because I'm trying to understand whether in 314 -- 17:12:08 21 because you make this point that Google itself uses every 22 one of its users' devices, I'm trying to understand if 23 you're trying -- are you trying to say there that the 24 phrase "other people who use this device won't see your 25 activity" is inaccurate because Google uses people's 17:12:26 Page 178</p>	<p>1 MR. CROSBY: Object to the form. 2 THE WITNESS: I am not an attorney. 3 Q. BY MR. BROOME: You're not an attorney and you 4 are not evaluating Google's disclosures against any legal 5 standard; correct? 17:14:18 6 A. That is correct. But you listed a few 7 potentials in -- previously. So not by any of those 8 statutes. 9 Q. You referenced the generally accepted practices 10 of your industry; is that right? 17:14:43 11 A. Okay. Okay. 12 Q. And where do those -- can someone -- are those 13 like in a form that someone can actually look at? 14 A. They are not formalized, no. 15 Q. Okay. Can you turn to paragraph 266, please. 17:14:57 16 A. I'm there. 17 Q. You write: "In June 2017, Apple announced its 18 Intelligent Tracking Protection, a feature for Safari 19 that limited the use of cookies for cross-site tracking 20 by blocking third-party cookies after 24 hours of 17:15:54 21 inactivity and purging all cookies after 30 days." 22 Do you see that? 23 A. I do. 24 Q. And does that mean that information sent to 25 Google from non-Google websites using its services would 17:16:13 Page 180</p>
<p>1 devices in Incognito mode and does see their activity? 2 MR. CROSBY: Object to the form. 3 Q. BY MR. BROOME: Sorry. Yeah, and I'm just 4 referring to that clause. I understand that, you know, 5 there are clauses in the context of a larger sentence. 17:12:42 6 A. I would agree with you that the other people use 7 this device refers to other human beings who are touching 8 the physical object. 9 Q. Okay. So people with whom you share the device 10 or somebody else who might look at your device? 17:13:02 11 A. Yes. 12 Q. Okay. In 12.3, you opine that Google failed to 13 adequately correct its surveillance of Incognito users. 14 Do you see that? 15 A. I do. 17:13:35 16 Q. And just so we have a record of it, against what 17 standard are you evaluating the adequacy of Google's 18 disclosures? 19 MR. CROSBY: Object to the form. 20 THE WITNESS: Again, like everything else, I'm 17:13:44 21 evaluating it according to my expertise as a securities 22 and privacy expert and the generally accepted practices 23 of our industry. 24 Q. BY MR. BROOME: And you're not evaluating it 25 against any legal standards; correct? 17:13:58 Page 179</p>	<p>1 be different from a user in Safari after June 2017 than 2 it would be from a user in Chrome? 3 MR. CROSBY: Object to the form. 4 THE WITNESS: I don't know. I actually don't 5 know enough about Chrome right now to answer that. 17:16:32 6 Q. BY MR. BROOME: Okay. If you go to 267. You 7 wrote: "In June 2019, Mozilla rolled out its Enhanced 8 Tracking Prevention feature for Firefox, which blocked by 9 default cookies from known third-party trackers when a 10 user downloaded the Firefox browser." 17:17:24 11 Do you see that? 12 A. I do. 13 Q. Does that block by default cookies from Google? 14 A. So I don't know. Google plays this game about 15 cookies. They call their third-party cookies first-party 17:17:35 16 cookies, and I actually couldn't tell you right now what 17 Firefox does about that. 18 Q. Okay. If you turn to Section 8.3, which starts 19 at paragraph 185. 20 A. Okay. 17:18:35 21 Q. There's a section there says: "Google Uses 22 Cookie Matching to Help Identify Users in Real-Time 23 Bidding." 24 Do you have any expertise in Google's real-time 25 bidding platform? 17:18:46 Page 181</p>

<p>1 A. Define "expertise."</p> <p>2 Q. Well, what experience do you have studying</p> <p>3 Google's real-time bidding platform?</p> <p>4 A. I have studied it.</p> <p>5 Q. In connection with this case? 17:18:59</p> <p>6 A. In connection with this case, yes. I knew about</p> <p>7 it generally beforehand, but I learned a lot for this</p> <p>8 case.</p> <p>9 Q. Okay. And so is the testimony in this case just</p> <p>10 based off of information you learned -- in this Section 17:19:12</p> <p>11 8.3 -- let me start again.</p> <p>12 Is the testimony that you offer in this Section</p> <p>13 8.3 based on your review of Google's documents?</p> <p>14 MR. CROSBY: Object to the form.</p> <p>15 THE WITNESS: It is certainly -- you didn't say 17:19:37</p> <p>16 based solely on. So I will say yes, this is based on me</p> <p>17 reading and understanding Google's documents of how these</p> <p>18 systems work.</p> <p>19 Q. BY MR. BROOME: Okay. Is this section based --</p> <p>20 I see there's an article you cite from Brad Bender at 17:20:12</p> <p>21 footnote 208, and an article you cite at footnote 200.</p> <p>22 Oh, that's in the previous section.</p> <p>23 So aside from the article from Brad Bender, what</p> <p>24 else is this section based on?</p> <p>25 Let me start again. 17:20:28</p> <p style="text-align: right;">Page 182</p>	<p>1 5:35 p.m.</p> <p>2 MR. BROOME: All right. I'm now going to ask</p> <p>3 you some questions about your rebuttal report. So we'll</p> <p>4 load that as Exhibit 9, and I assume you have your hard</p> <p>5 copy. 17:34:58</p> <p>6 (Exhibit 9, Expert Rebuttal Report of Bruce</p> <p>7 Schneier Rebuttal of Expert Georgios Zervas,</p> <p>8 06/07/22, was marked for identification by</p> <p>9 counsel electronically.)</p> <p>10 Q. BY MR. BROOME: Okay. It should be there. 17:35:13</p> <p>11 All right. And opinion -- let's see. I guess</p> <p>12 this is Opinion 1, Section 3, beginning paragraph 8. You</p> <p>13 have an opinion there that says: "Professor Zervas</p> <p>14 failed to investigate Google's systems or engage with the</p> <p>15 actual evidence in this case." 17:35:47</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Did you investigate Google's systems?</p> <p>19 A. I did not.</p> <p>20 Q. You understand that Dr. Zervas performed testing 17:35:57</p> <p>21 of various browsers and operating systems that show how</p> <p>22 data are sent to Google in both regular and private</p> <p>23 browsing modes across different browsers and operating</p> <p>24 systems?</p> <p>25 A. I do. 17:36:09</p> <p style="text-align: right;">Page 184</p>
<p>1 Aside from the article from Brad Bender and</p> <p>2 Google's documents, what else is this section based on?</p> <p>3 A. I did a lot of research to put this together,</p> <p>4 and it is certainly possible that there are other things</p> <p>5 I read that didn't rise to the level of citations that I 17:20:45</p> <p>6 used.</p> <p>7 Q. Is it possible that there are other materials</p> <p>8 that you considered in preparing this section that are</p> <p>9 not cited? Is that what you're saying?</p> <p>10 MR. CROSBY: Object to the form. 17:21:02</p> <p>11 THE WITNESS: I mean, if something doesn't rise</p> <p>12 to the level of a citation, it's not going in there. And</p> <p>13 my guess is there's a lot in here that I either knew</p> <p>14 beforehand or -- or just figured out. I mean, you're</p> <p>15 asking me if we can match every single sentence to a 17:21:28</p> <p>16 reference, and I'm sure the answer to that is going to be</p> <p>17 no.</p> <p>18 MR. BROOME: Let's take another maybe ten-minute</p> <p>19 break. We can go off the record for a minute, if that's</p> <p>20 all right. 17:21:42</p> <p>21 MR. CROSBY: Sure.</p> <p>22 THE VIDEOGRAPHER: Going off the record at</p> <p>23 5:22 p.m.</p> <p>24 (Recess.)</p> <p>25 THE VIDEOGRAPHER: We are back on the record at 17:34:43</p> <p style="text-align: right;">Page 183</p>	<p>1 Q. Okay. All right. In paragraph 13, 14, and 15,</p> <p>2 you quote three of Professor Zervas' opinions.</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. Do you have any basis for opining that those 17:36:38</p> <p>6 conclusions by Professor Zervas are incorrect?</p> <p>7 MR. CROSBY: Object to the form.</p> <p>8 THE WITNESS: I do not. What I say is his</p> <p>9 analysis is incomplete, not incorrect.</p> <p>10 Q. BY MR. BROOME: Okay. Paragraph 21, you -- I 17:37:16</p> <p>11 guess you're referring to Google's internal documents.</p> <p>12 You say: "Professor Zervas fails to consider Google's</p> <p>13 own internal documents that similarly describe</p> <p>14 fingerprinting as the use of unique or probabilistically</p> <p>15 unique combinations of one or more device, network, or 17:37:41</p> <p>16 app browser attributes to identify a device app browser</p> <p>17 or user across different transactions where no persistent</p> <p>18 unique identifier is explicitly provided by a user's</p> <p>19 device, app, or browser."</p> <p>20 Do you see that? 17:37:59</p> <p>21 A. I do.</p> <p>22 Q. Do you agree that fingerprinting is</p> <p>23 probabilistic; it's not an exact science?</p> <p>24 MR. CROSBY: Object to the form.</p> <p>25 THE WITNESS: I don't know enough about the 17:38:16</p> <p style="text-align: right;">Page 185</p>

<p>1 details of what Google can do in fingerprinting. I think</p> <p>2 it's fair to say that some of it is probabilistic and</p> <p>3 some of it is exact, but you know, how probabilistic is</p> <p>4 it? Does it matter? Fingerprinting, it's like human</p> <p>5 fingerprints. Is probabilistic, yet it is highly 17:38:33</p> <p>6 accurate. So there's a lot of nuances in that that I</p> <p>7 don't know.</p> <p>8 Q. BY MR. BROOME: In paragraph 36, in the fourth</p> <p>9 sentence, you write: "Google recognizes the joinability</p> <p>10 risk posed by the collection of IP address information." 17:39:17</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. IP addresses are -- are dynamic; right?</p> <p>14 MR. CROSBY: Object to the form.</p> <p>15 THE WITNESS: For most people, they are. 17:39:30</p> <p>16 Sorry.</p> <p>17 For most people, they are. For some people,</p> <p>18 they're static.</p> <p>19 Q. BY MR. BROOME: Okay. For most people, the IP</p> <p>20 address is -- IP address they're -- let me start again. 17:39:39</p> <p>21 For most people, their IP address changes</p> <p>22 periodically automatically; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And do you have any idea as to the frequency</p> <p>25 with which their IP address changes? 17:39:52</p> <p style="text-align: right;">Page 186</p>	<p>1 A. Yes.</p> <p>2 Q. In paragraph 37, you talk about -- you say:</p> <p>3 "Another important tool for joinability is the user agent</p> <p>4 string."</p> <p>5 Do you see that? 17:41:29</p> <p>6 A. I do.</p> <p>7 Q. A user agent string can't always uniquely</p> <p>8 identify a user or even a particular device; correct?</p> <p>9 A. Say it again. I'm sorry.</p> <p>10 Q. A user agent string cannot necessarily be used 17:41:41</p> <p>11 to uniquely identify a user or device; correct?</p> <p>12 MR. CROSBY: Object to the form.</p> <p>13 THE WITNESS: A user agent string is something</p> <p>14 we do use to identify devices. You're asking does there</p> <p>15 exist a case in the history of the internet where it 17:41:59</p> <p>16 can't be used. Probably, yes.</p> <p>17 Q. BY MR. BROOME: Fair enough.</p> <p>18 What does a user agent string include?</p> <p>19 A. Oh, God. I don't remember.</p> <p>20 Q. Okay. 17:42:09</p> <p>21 A. Yeah. I actually don't remember. It's getting</p> <p>22 late.</p> <p>23 Q. Yep. Let me give you a hypothetical.</p> <p>24 Imagine you've got three people in a crowded</p> <p>25 coffee shop all working from the same IP address on the 17:42:30</p> <p style="text-align: right;">Page 188</p>
<p>1 A. No, I don't. I would look that up.</p> <p>2 Q. Okay. For most people, even their IP address</p> <p>3 they use at home is dynamic, and therefore, changes</p> <p>4 periodically; correct?</p> <p>5 MR. CROSBY: Object to the form. 17:40:17</p> <p>6 THE WITNESS: So now I'm saying I would start</p> <p>7 looking this stuff up.</p> <p>8 Q. BY MR. BROOME: Okay.</p> <p>9 A. Most people is more than half. So now we're</p> <p>10 talking about users. For some people, it's dynamic. For 17:40:27</p> <p>11 some people, it's static.</p> <p>12 Q. Okay.</p> <p>13 A. I'm willing to say that now. Anything else, I</p> <p>14 didn't research for this report, and I want to make sure</p> <p>15 I'm accurate before I tell you this. 17:40:37</p> <p>16 Q. For a mobile device, the IP address is going to</p> <p>17 depend on where the user is physically when they connect</p> <p>18 to the internet; correct?</p> <p>19 A. Yes.</p> <p>20 Q. So if they're at home using their mobile device, 17:40:54</p> <p>21 they might be using one IP address, and if they're at</p> <p>22 work, they would be using a different IP address, and if</p> <p>23 they're at the shopping mall, they might be using another</p> <p>24 different IP address.</p> <p>25 Is that all fair? 17:41:13</p> <p style="text-align: right;">Page 187</p>	<p>1 same latest Mac laptop, with the latest version of Chrome</p> <p>2 and using default settings.</p> <p>3 In that scenario, could you use IP address and</p> <p>4 user agent string to uniquely identify a device?</p> <p>5 MR. CROSBY: Object to the form. 17:42:53</p> <p>6 THE WITNESS: So using those two things alone --</p> <p>7 Q. BY MR. BROOME: Yes.</p> <p>8 A. -- and nothing else? So you don't know where</p> <p>9 they're browsing. You know nothing about their history.</p> <p>10 They appear out of thin error, like magically. You have 17:43:07</p> <p>11 a new laptop, same configuration. Open it up at the same</p> <p>12 time. Get three different dynamic IPs from the -- from</p> <p>13 the wireless access point. Visit the same website?</p> <p>14 Q. No, not visiting the same website.</p> <p>15 A. Visit three different websites. Close their 17:43:25</p> <p>16 computer, and then disappear into thin air. That's your</p> <p>17 hypothetical?</p> <p>18 Q. Let's start with that one.</p> <p>19 A. My guess is it would be hard. You know, if the</p> <p>20 FBI did it, I'd be impressed. I wouldn't be shocked. 17:43:42</p> <p>21 Q. Why does it matter whether you have access to</p> <p>22 their prior browsing history in that hypothetical?</p> <p>23 A. Well, in that hypothetical, there isn't any</p> <p>24 private browsing history. Right? They're appearing out</p> <p>25 of thin air -- 17:44:05</p> <p style="text-align: right;">Page 189</p>

<p>1 Q. Yeah.</p> <p>2 A. -- visiting the website, leaving. There's no</p> <p>3 history. It's just like one visit.</p> <p>4 Q. Yeah. So if you did have history, would that</p> <p>5 allow you to identify -- uniquely identify a device? 17:44:14</p> <p>6 MR. CROSBY: Object to the form.</p> <p>7 THE WITNESS: So it's a matter of degree. It's</p> <p>8 a matter of degree. History gives you more information.</p> <p>9 The more you know, the more able you are to identify</p> <p>10 somebody. 17:44:28</p> <p>11 So, you know, we're going to assume that the --</p> <p>12 the FBI is doing this investigation, is going to know</p> <p>13 something about who they're looking for. Does a person</p> <p>14 visit a website that they habitually visit? It's often</p> <p>15 not who you -- random people out of thin air. 17:44:44</p> <p>16 There's a lot of context in these questions.</p> <p>17 So, you know, the hypotheticals are hard. But the</p> <p>18 reality is, I think, much more subtle.</p> <p>19 Q. BY MR. BROOME: Okay. So if all you had was</p> <p>20 IP -- IP address and user agent string, could you -- 17:45:40</p> <p>21 could that be used to uniquely identify a user?</p> <p>22 A. So --</p> <p>23 MR. CROSBY: Object to the form.</p> <p>24 THE WITNESS: -- what you're asking me is if I</p> <p>25 hand you two pieces of paper, one has my IP address and 17:45:56</p> <p style="text-align: right;">Page 190</p>	<p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Do you agree that although an IP address can be</p> <p>4 very precise, it can also be quite coarse?</p> <p>5 A. Yes. 17:47:50</p> <p>6 MR. CROSBY: Object to the form.</p> <p>7 THE WITNESS: Sorry.</p> <p>8 Q. BY MR. BROOME: Meaning that it may not identify</p> <p>9 much more than where -- what ZIP code a user is in?</p> <p>10 A. Yeah, I don't know about ZIP code. That's a 17:47:59</p> <p>11 geographical limitation. Because we're talking about</p> <p>12 network space, not physical space. Stick with coarse.</p> <p>13 Q. Okay. Okay. Paragraph 48.</p> <p>14 A. Uh-huh.</p> <p>15 Q. You say: "User-ID is tied to an individual's 17:49:18</p> <p>16 account with a non-Google website. User-ID itself</p> <p>17 thereby qualifies as personally identifiable</p> <p>18 information."</p> <p>19 Do you see that?</p> <p>20 A. No -- yes, I do. Sorry. Apologies. Yes. 17:49:34</p> <p>21 Q. Yeah, last sentence. Sorry. I should have been</p> <p>22 more precise.</p> <p>23 Do you see that? Okay.</p> <p>24 Although the User-ID is tied to an individual's</p> <p>25 account with a non-Google website, Google does not 17:49:50</p> <p style="text-align: right;">Page 192</p>
<p>1 one has the user string, and I say go to town.</p> <p>2 Q. BY MR. BROOME: Well, yeah. Let's start with</p> <p>3 that. Does that allow you to uniquely identify a device?</p> <p>4 A. You know, in most cases, it doesn't. Again, you</p> <p>5 know, if you've got some trick I don't know about. But, 17:46:12</p> <p>6 you know, I would like to think that that is not enough.</p> <p>7 Q. Okay. So IP address plus user agent -- well,</p> <p>8 withdrawn.</p> <p>9 A. I mean, it's hard; right? Because the IP</p> <p>10 address will tell you like which internet cafe the 17:46:32</p> <p>11 person's at. Now you go to the cafe? Do you interview</p> <p>12 the people who work there? Do you learn more</p> <p>13 information? It's all part of context. It's really hard</p> <p>14 to pull out just one thing and say, you know, we're done</p> <p>15 here. 17:46:46</p> <p>16 Q. All right. So multiple people could share the</p> <p>17 same IP address and user agent; is that fair?</p> <p>18 MR. CROSBY: Object to the form.</p> <p>19 THE WITNESS: Yes. Yes.</p> <p>20 Q. BY MR. BROOME: In paragraph 47 -- I'm sorry, 17:47:02</p> <p>21 paragraph 42.</p> <p>22 A. Uh-huh.</p> <p>23 Q. You quote this Google document, and it says:</p> <p>24 "IP address can be very precise, equivalent to GPS for</p> <p>25 all intents and purposes, depending on the scenario." 17:47:33</p> <p style="text-align: right;">Page 191</p>	<p>1 receive the personally identifiable information</p> <p>2 associated with that site; correct?</p> <p>3 A. I don't know. If you're asserting that, assert</p> <p>4 that, but I actually don't know what Google receives.</p> <p>5 Q. Okay. Well, why did you include this point that 17:50:06</p> <p>6 User-ID itself qualifies as personally identifiable</p> <p>7 information if you're not sure whether Google actually</p> <p>8 receives that information?</p> <p>9 A. Because it does -- so what I'm saying in this is</p> <p>10 that -- we talked about this earlier, that Google could 17:50:22</p> <p>11 use this information. I just asked me whether they do.</p> <p>12 What Zervas is saying is that Google chooses not to, but</p> <p>13 that says nothing about whether Google could. And then</p> <p>14 see back to my discussions of chilling effects and</p> <p>15 possibilities of surveillance. 17:50:46</p> <p>16 Q. Okay. But you're not sure one way or the other</p> <p>17 whether Google actually receives the PII that is</p> <p>18 associated with an individual's account at a non-Google</p> <p>19 website?</p> <p>20 A. I am not, nor do I know whether they can infer 17:51:01</p> <p>21 that through other means.</p> <p>22 Q. All right. Let's go to 53.</p> <p>23 In 53 you say: "Based on my experience and</p> <p>24 consistent with the many internal Google documents I have</p> <p>25 reviewed that were apparently not considered by Professor 17:51:42</p> <p style="text-align: right;">Page 193</p>


<p>1 STATE OF CALIFORNIA) ss: 2 COUNTY OF MARIN) 3 4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do 5 hereby certify: 6 That the foregoing deposition testimony was 7 taken before me at the time and place therein set forth 8 and at which time the witness was administered the oath; 9 That testimony of the witness and all objections 10 made by counsel at the time of the examination were 11 recorded stenographically by me, and were thereafter 12 transcribed under my direction and supervision, and that 13 the foregoing pages contain a full, true and accurate 14 record of all proceedings and testimony to the best of my 15 skill and ability. 16 I further certify that I am neither counsel for 17 any party to said action, nor am I related to any party 18 to said action, nor am I in any way interested in the 19 outcome thereof. 20 IN WITNESS WHEREOF, I have subscribed my name 21 this 19th day of July, 2022. 22 23 24  25 LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462 Page 230</p>	<p>1 <u>X</u> Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF 2 Transcript - The witness should review the transcript and 3 make any necessary corrections on the errata pages included 4 below, notating the page and line number of the corrections. 5 The witness should then sign and date the errata and penalty 6 of perjury pages and return the completed pages to all 7 appearing counsel within the period of time determined at 8 the deposition or provided by the Federal Rules. 9 <u> </u> Federal R&S Not Requested - Reading & Signature was not 10 requested before the completion of the deposition. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 Page 232</p>
<p>1 IAN B. CROSBY, ESQ. 2 icrosby@susmangodfrey.com 3 July 19, 2022 4 RE: BROWN VS. GOOGLE LLC 5 JULY 18, 2022, BRUCE SCHNEIER, JOB NO. 5312337 6 The above-referenced transcript has been 7 completed by Veritext Legal Solutions and 8 review of the transcript is being handled as follows: 9 <u> </u> Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext 10 to schedule a time to review the original transcript at 11 a Veritext office. 12 <u> </u> Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF 13 Transcript - The witness should review the transcript and 14 make any necessary corrections on the errata pages included 15 below, notating the page and line number of the corrections. 16 The witness should then sign and date the errata and penalty 17 of perjury pages and return the completed pages to all 18 appearing counsel within the period of time determined at 19 the deposition or provided by the Code of Civil Procedure. 20 <u> </u> Waiving the CA Code of Civil Procedure per Stipulation of 21 Counsel - Original transcript to be released for signature 22 as determined at the deposition. 23 <u> </u> Signature Waived – Reading & Signature was waived at the 24 time of the deposition. 25 Page 231</p>	<p>1 RE: BROWN VS. GOOGLE LLC 2 BRUCE SCHNEIER, JOB NO. 5312337 3 E R R A T A S H E E T 4 PAGE <u> </u> LINE <u> </u> CHANGE <u> </u> 5 <u> </u> 6 REASON <u> </u> 7 PAGE <u> </u> LINE <u> </u> CHANGE <u> </u> 8 <u> </u> 9 REASON <u> </u> 10 PAGE <u> </u> LINE <u> </u> CHANGE <u> </u> 11 <u> </u> 12 REASON <u> </u> 13 PAGE <u> </u> LINE <u> </u> CHANGE <u> </u> 14 <u> </u> 15 REASON <u> </u> 16 PAGE <u> </u> LINE <u> </u> CHANGE <u> </u> 17 <u> </u> 18 REASON <u> </u> 19 PAGE <u> </u> LINE <u> </u> CHANGE <u> </u> 20 <u> </u> 21 REASON <u> </u> 22 <u> </u> 23 <u> </u> 24 WITNESS <u> </u> Date <u> </u> 25 Page 233</p>

EXHIBIT 33

"The public conversation about surveillance in the digital age would be a good deal more intelligent if we all read Bruce Schneier first."

—MALCOLM GLADWELL

**Exhibit
0003**

7/18/2022
Bruce Schneier

DATA AND GOLIATH

The Hidden Battles to Collect
Your Data and Control Your World

BRUCE SCHNEIER

DATA AND GOLIATH

The Hidden Battles to Collect
Your Data and Control Your World

BRUCE SCHNEIER



W. W. NORTON & COMPANY
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being monitored. We use electronic payment systems, not thinking about how they're keeping a record of our purchases. We carry our cell phones with us, not understanding that they're constantly tracking our location.

Buzzfeed is an entertainment website that collects an enormous amount of information about its users. Much of the data comes from traditional Internet tracking, but BuzzFeed also has a lot of fun quizzes, some of which ask very personal questions. One of them—"How Privileged Are You?"—asks about financial details, job stability, recreational activities, and mental health. Over two million people have taken that quiz, not realizing that BuzzFeed saves data from its quizzes. Similarly, medical information sites like WebMD collect data on what pages users search for and read.

Lest you think it's only your web browsing, e-mails, phone calls, chats, and other electronic communications that are monitored, old-fashioned paper mail is tracked as well. Through a program called Isolation Control and Tracking, the US Postal Service photographs the exterior, front and back, of *every piece of mail sent in the US*. That's about 160 billion pieces annually. This data is available to law enforcement, and certainly other government agencies as well.

Off the Internet, many surveillance technologies are getting smaller and less obtrusive. In some cities, video cameras capture our images hundreds of times a day. Some are obvious, but we don't see a CCTV camera embedded in a ceiling light or ATM, or a gigapixel camera a block away. Drones are getting smaller and harder to see; they're now the size of insects and soon the size of dust.

Add identification software to any of these image collection systems, and you have an automatic omnipresent surveillance system. Face recognition is the easiest way to identify people on camera, and the technology is getting better every year. In 2014, face recognition algorithms started outperforming people. There are other image identification technologies in development: iris scanners that work at a distance, gait recognition systems, and so on.

There's more hidden surveillance going on in the streets. Those contactless RFID chip cards in your wallet can be used to track people. Many retail stores are surreptitiously tracking people by the MAC addresses and Bluetooth IDs—which are basically identification numbers—broadcast by their smartphones. The goal is to record which aisles they walk down, which products they stop to look at, and so on. People can be tracked at public events by means of both these approaches.

In 2014, a senior executive from the Ford Motor Company told an audience at the Consumer Electronics Show, "We know everyone who breaks the law, we know when you're doing it. We have GPS in your car, so we know what you're doing." This came as a shock and surprise, since no one knew Ford had its car owners under constant surveillance. The company quickly retracted the remarks, but the comments left a lot of wiggle room for Ford to collect data on its car owners. We know from a Government Accountability Office report that both automobile companies and navigational aid companies collect a lot of location data from their users.

Radar in the terahertz range can detect concealed weapons on people, and objects through eight inches of concrete wall. Cameras can “listen” to phone conversations by focusing on nearby objects like potato chip bags and measuring their vibrations. The NSA, and presumably others, can turn your cell phone’s microphone on remotely, and listen to what’s going on around it.

There are body odor recognition systems under development, too. On the Internet, one company is working on identifying people by their typing style. There’s research into identifying people by their writing style. Both corporations and governments are harvesting tens of millions of voiceprints—yet another way to identify you in real time.

This is the future. Store clerks will know your name, address, and income level as soon as you walk through the door. Billboards will know who you are, and record how you respond to them. Grocery store shelves will know what you usually buy, and exactly how to entice you to buy more of it. Your car will know who is in it, who is driving, and what traffic laws that driver is following or ignoring. Even now, it feels a lot like science fiction.

As surveillance fades into the background, it becomes easier to ignore. And the more intrusive a surveillance system is, the more likely it is to be hidden. Many of us would refuse a drug test before being hired for an office job, but many companies perform invasive background checks on all potential employees. Likewise, being tracked by hundreds of companies on the Internet—companies you’ve never interacted with or even heard of—feels much less intrusive than a hundred market researchers following us around taking notes.

In a sense, we’re living in a unique time in history; many of our surveillance systems are still visible to us. Identity checks are common, but they still require us to show our ID. Cameras are everywhere, but we can still see them. In the near future, because these systems will be hidden, we may unknowingly acquiesce to even more surveillance.

AUTOMATIC SURVEILLANCE

A surprising amount of surveillance happens to us automatically, even if we do our best to opt out. It happens because we interact with others, and *they’re* being monitored.

Even though I never post or friend anyone on Facebook—I have a professional page, but not a personal account—Facebook tracks me. It maintains a profile of non-Facebook users in its database. It tracks me whenever I visit a page with a Facebook “Like” button. It can probably make good guesses about who my friends are based on tagged photos, and it may well have the profile linked to other information it has purchased from various data brokers. My friends, and those sites with the Like buttons, allow Facebook to surveil me through them.

I try not to use Google search. But Google still collects a lot of information about the websites I visit, because so many of them use Google Analytics to track their visitors. Again, those sites let Google track me through them. I use various blockers in my browser so Google can’t track me very well, but it’s working on technologies that will circumvent

my privacy practices.

I also don't use Gmail. Instead, I use a local ISP and store all of my e-mail on my computer. Even so, Google has about a third of my messages, because many of the people I correspond with use Gmail. It's not just Gmail.com addresses; Google hosts a lot of organizations' e-mail, even though those organizations keep their domain name addresses. There are other examples. Apple has a worldwide database of Wi-Fi passwords, including my home network's, from people backing up their iPhones. Many companies have my contact information because my friends and colleagues back up their address books in the cloud. If my sister publishes her genetic information, then half of mine becomes public as well.

Sometimes data we only intend to share with a few becomes surveillance data for the world. Someone might take a picture of a friend at a party and post it on Facebook so her other friends can see it. Unless she specifies otherwise, that picture is public. It's still hard to find, of course—until it's tagged by an automatic face recognition system and indexed by a search engine. Now that photo can be easily found with an image search.

I am constantly appearing on other people's surveillance cameras. In cities like London, Chicago, Mexico City, and Beijing, the police forces have installed surveillance cameras all over the place. In other cities, like New York, the cameras are mostly privately owned. We saw the difference in two recent terrorism cases. The London subway bombers were identified by government cameras, and the Boston Marathon bombers by private cameras attached to businesses.

That data is almost certainly digital. Often it's just stored on the camera, on an endless loop that erases old data as it records new data. But increasingly, that surveillance video is available on the Internet and being saved indefinitely—and a lot of it is publicly searchable.

Unless we take steps to prevent it, being captured on camera will get even less avoidable as life recorders become more prevalent. Once enough people regularly record video of what they are seeing, you'll be in enough of their video footage that it'll no longer matter whether or not you're wearing one. It's kind of like herd immunity, but in reverse.

UBIQUITOUS SURVEILLANCE

Philosopher Jeremy Bentham conceived of his “panopticon” in the late 1700s as a way to build cheaper prisons. His idea was a prison where every inmate could be surveilled at any time, unawares. The inmate would have no choice but to assume that he was always being watched, and would therefore conform. This idea has been used as a metaphor for mass personal data collection, both on the Internet and off.

On the Internet, surveillance is ubiquitous. All of us are being watched, all the time, and that data is being stored forever. This is what an information-age surveillance state looks like, and it's efficient beyond Bentham's wildest dreams.

The primary goal of all this corporate Internet surveillance is advertising. There's a little market research and customer service in there, but those activities are secondary to the goal of more effectively selling you things.

Internet surveillance is traditionally based on something called a cookie. The name sounds benign, but the technical description "persistent identifier" is far more accurate. Cookies weren't intended to be surveillance devices; rather, they were designed to make surfing the web easier. Websites don't inherently remember you from visit to visit or even from click to click. Cookies provide the solution to this problem. Each cookie contains a unique number that allows the site to identify you. So now when you click around on an Internet merchant's site, you keep telling it, "I'm customer #608431." This allows the site to find your account, keep your shopping cart attached to you, remember you the next time you visit, and so on.

Companies quickly realized that they could set their own cookies on pages belonging to other sites—with their permission and by paying for the privilege—and the third-party cookie was born. Enterprises like DoubleClick (purchased by Google in 2007) started tracking web users across many different sites. This is when ads started following you around the web. Research a particular car or vacation destination or medical condition, and for weeks you'll see ads for that car or city or a related pharmaceutical on every commercial Internet site you visit.

This has evolved into a shockingly extensive, robust, and profitable surveillance architecture. You are being tracked pretty much everywhere you go on the Internet, by many companies and data brokers: ten different companies on one site, a dozen on another. Facebook tracks you on every site with a Facebook Like button (whether you're logged in to Facebook or not), and Google tracks you on every site that has a Google Plus +1 button or that simply uses Google Analytics to monitor its own web traffic.

Most of the companies tracking you have names you've never heard of: Rubicon Project, AdSonar, Quantcast, Pulse 260, Undertone, Traffic Marketplace. If you want to see who's tracking you, install one of the browser plugins that let you monitor cookies. I guarantee you will be startled. One reporter discovered that 105 different companies tracked his Internet use during one 36-hour period. In 2010, a seemingly innocuous site like Dictionary.com installed over 200 tracking cookies on your browser when you visited.

It's no different on your smartphone. The apps there track you as well. They track your location, and sometimes download your address book, calendar, bookmarks, and search history. In 2013, the rapper Jay-Z and Samsung teamed up to offer people who downloaded an app the ability to hear the new Jay-Z album before release. The app required the ability to view all accounts on the phone, track the phone's location, and track who the user was talking to on the phone. And the Angry Birds game even collects location data when you're not playing.

Broadband companies like Comcast also conduct surveillance on their users. These days they're mostly monitoring to see whether you illegally download copyrighted songs and videos, but other applications aren't far behind. Verizon, Microsoft, and others are working on a set-top box that can monitor what's going on in the room, and serve ads

based on that information.

It's less Big Brother, and more hundreds of tattletale little brothers.

Today, Internet surveillance is far more insistent than cookies. In fact, there's a minor arms race going on. Your browser—yes, even Google Chrome—has extensive controls to block or delete cookies, and many people enable those features. DoNotTrackMe is one of the most popular browser plug-ins. The Internet surveillance industry has responded with “flash cookies”—basically, cookie-like files that are stored with Adobe's Flash player and remain when browsers delete their cookies. To block those, you can install FlashBlock. But there are other ways to uniquely track you, with esoteric names like evercookies, canvas fingerprinting, and cookie synching. It's not just marketers; in 2014, researchers found that the White House website used evercookies, in violation of its own privacy policy. I'll give some advice about blocking web surveillance in Chapter 15.

Cookies are inherently anonymous, but companies are increasingly able to correlate them with other information that positively identifies us. You identify yourself willingly to lots of Internet services. Often you do this with only a username, but increasingly usernames can be tied to your real name. Google tried to compel this with its “real name policy,” which mandated that users register for Google Plus with their legal names, until it rescinded that policy in 2014. Facebook pretty much demands real names. Anytime you use your credit card number to buy something, your real identity is tied to any cookies set by companies involved in that transaction. And any browsing you do on your smartphone is tied to you as the phone's owner, although the website might not know it.

FREE AND CONVENIENT

Surveillance is the business model of the Internet for two primary reasons: people like free, and people like convenient. The truth is, though, that people aren't given much of a choice. It's either surveillance or nothing, and the surveillance is conveniently invisible so you don't have to think about it. And it's all possible because US law has failed to keep up with changes in business practices.

Before 1993, the Internet was entirely noncommercial, and free became the online norm. When commercial services first hit the Internet, there was a lot of talk about how to charge for them. It quickly became clear that, except for a few isolated circumstances like investment and porn websites, people weren't willing to pay even a small amount for access. Much like the business model for television, advertising was the only revenue model that made sense, and surveillance has made that advertising more profitable. Websites can charge higher prices for personally targeted advertising than they can for broadcast advertising. This is how we ended up with nominally free systems that collect and sell our data in exchange for services, then blast us with advertising.

“Free” is a special price, and there has been all sorts of psychological research showing that people don't act rationally around it. We overestimate the value of free. We consume more of something than we should when it's free. We pressure others to consume it. Free warps our normal sense of cost vs. benefit, and people end up trading their

personal data for less than its worth.

This tendency to undervalue privacy is exacerbated by companies deliberately making sure that privacy is not salient to users. When you log on to Facebook, you don't think about how much personal information you're revealing to the company; you chat with your friends. When you wake up in the morning, you don't think about how you're going to allow a bunch of companies to track you throughout the day; you just put your cell phone in your pocket.

The result is that Internet companies can improve their product offerings to their actual customers by reducing user privacy. Facebook has done it systematically over the years, regularly updating its privacy policy to obtain more access to your data and give you less privacy. Facebook has also changed its default settings so that more people can see your name, photo, wall posts, photos you post, Likes, and so on. Google has done much the same. In 2012, it announced a major change: Google would link its data about you from search, Gmail, YouTube (which Google owns), Google Plus, and so on into one large data set about you.

Apple is somewhat of an exception here. The company exists to market consumer products, and although it could spy on iCloud users' e-mail, text messages, calendar, address book, and photos, it does not. It uses iTunes purchase information only to suggest other songs and videos a user might want to buy. In late 2014, it started using this as a market differentiator.

Convenience is the other reason we willingly give highly personal data to corporate interests, and put up with becoming objects of their surveillance. As I keep saying, surveillance-based services are useful and valuable. We like it when we can access our address book, calendar, photographs, documents, and everything else on any device we happen to be near. We like services like Siri and Google Now, which work best when they know tons about you. Social networking apps make it easier to hang out with our friends. Cell phone apps like Google Maps, Yelp, Weather, and Uber work better and faster when they know our location. Letting apps like Pocket or Instapaper know what we're reading feels like a small price to pay for getting everything we want to read in one convenient place. We even like it when ads are targeted to exactly what we're interested in. The benefits of surveillance in these and other applications are real, and significant.

We especially don't mind if a company collects our data and uses it within its own service to better serve us. This is why Amazon recommendations are rarely mentioned when people complain about corporate surveillance. Amazon constantly recommends things for you to buy based on the things you've bought and the things other people have bought. Amazon's using your data in the same context it was collected, and it's completely transparent to the user. It's very big business for Amazon, and people largely accept it. They start objecting, though, when their data is bought, sold, and used without their knowledge or consent.

THE DATA BROKER INDUSTRY

study by the Information Technology and Innovation Foundation foresees the loss of revenue at \$22 to \$35 billion over three years; that's 10% to 20% of US cloud providers' foreign market share. The Internet analysis firm Forrester Research believes that's low; it estimates three-year losses at \$180 billion because some US companies will also move to foreign cloud providers.

US computer and networking companies are also taking severe hits. Cisco reported 2013 fourth quarter revenue declines of 8% to 10%. AT&T also reported earnings losses, and had problems with its European expansion plans. IBM lost sales in China. So did Qualcomm. Verizon lost a large German government contract. There's more. I have attended private meetings where large US software companies complained about significant loss of foreign sales. Cisco's CEO John Chambers wrote to the Obama administration, saying that NSA's hacking of US equipment "will undermine confidence in our industry and in the ability of technology companies to deliver products globally."

Chambers's comments echo the third aspect of the competitiveness problem facing US companies in the wake of Snowden: they're no longer trusted. The world now knows that US telcos give the NSA access to the Internet backbone and that US cloud providers give it access to user accounts. The world now knows that the NSA intercepts US-sold computer equipment in transit and surreptitiously installs monitoring hardware. The world knows that a secret court compels US companies to make themselves available for NSA eavesdropping, and then orders them to lie about it in public. Remember the Lavabit story from Chapter 5?

All of this mistrust was exacerbated by the Obama administration's repeated reassurances that only non-Americans were the focus of most of the NSA's efforts. More than half of the revenue of many cloud companies comes from outside the US. Facebook's Mark Zuckerberg said it best in a 2013 interview: "The government response was, 'Oh don't worry, we're not spying on any Americans.' Oh, wonderful: that's really helpful to companies trying to serve people around the world, and that's really going to inspire confidence in American internet companies."

To be fair, we don't know how much of this backlash is a temporary blip because NSA surveillance was in the news, and how much of it will be permanent. We know that several countries—Germany is the big one—are trying to build a domestic cloud infrastructure to keep their national data out of the NSA's hands. German courts have recently ruled against data collection practices by Google, Facebook, and Apple, and the German government is considering banning all US companies that cooperate with the NSA. Data privacy is shaping up to be the new public safety requirement for international commerce.

It's also a new contractual requirement. Increasingly, large US companies are requiring their IT vendors to sign contracts warranting that there are no backdoors in their IT systems. More specifically, the contractual language requires the vendors to warrant that there is nothing that would allow a third party to access their corporate data. This makes it harder for IT companies to cooperate with the NSA or with any other government agency, because it exposes them to direct contractual liability to their biggest and most sophisticated customers. And to the extent they cannot sign such a guarantee, they're

going to lose business to companies who can.

We also don't know what sort of increase to expect in competitive products and services from other countries around the world. Many firms in Europe, Asia, and South America are stepping in to take advantage of this new wariness. If the 1990s crypto wars are any guide, hundreds of non-US companies are going to provide IT products that are beyond the reach of US law: software products, cloud services, social networking sites, networking equipment, everything. Regardless of whether these new products are actually more secure—other countries are probably building backdoors in the products they can control—or even beyond the reach of the NSA, the cost of NSA surveillance to American business will be huge.

CORPORATE SURVEILLANCE COSTS BUSINESS

It's been almost an axiom that no one will pay for privacy. This generalization may have been true once, but the attitudes are changing.

People are now much more cognizant of who has access to their data, and for years there have been indications that they're ready to pay for privacy. A 2000 study found that US Internet spending would increase by \$6 billion a year if customers felt their privacy was being protected when they made purchases. And a 2007 study found that customers were willing to pay more to have their privacy protected: \$0.60 per \$15 item. Post-Snowden, many companies are advertising protection from government surveillance.

Most companies don't offer privacy as a market differentiating feature, but there are exceptions. DuckDuckGo is a search engine whose business model revolves around *not* tracking its users. Wickr offers encrypted messaging. Ello is a social network that doesn't track its users. These are nowhere near as big as their established competitors, but they're viable businesses. And new ones are opening up shop all the time.

We are seeing the rising importance of customer and user privacy in the increasing number of corporations with chief privacy officers: senior executives responsible for managing the legal and reputational risk of the personal data the corporation holds. These executives have their own organization, the International Association of Privacy Professionals, and are establishing rules and regulations even in the absence of government impetus. They're doing this because it's good for business.

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Privacy

The most common misconception about privacy is that it's about having something to hide. "If you aren't doing anything wrong, then you have nothing to hide," the saying goes, with the obvious implication that privacy only aids wrongdoers.

If you think about it, though, this makes no sense. We do nothing wrong when we make love, go to the bathroom, or sing in the shower. We do nothing wrong when we search for a job without telling our current employer. We do nothing wrong when we seek out private places for reflection or conversation, when we choose not to talk about something emotional or personal, when we use envelopes for our mail, or when we confide in a friend and no one else.

Moreover, even those who say that don't really believe it. In a 2009 interview, Google CEO Eric Schmidt put it this way: "If you have something that you don't want anyone to know, maybe you shouldn't be doing it in the first place." But in 2005, Schmidt banned employees from talking to reporters at CNET because a reporter disclosed personal details about Schmidt in an article. Facebook's Mark Zuckerberg declared in 2010 that privacy is no longer a "social norm," but bought the four houses abutting his Palo Alto home to help ensure his own privacy.

There are few secrets we don't tell *someone*, and we continue to believe something is private even after we've told that person. We write intimate letters to lovers and friends, talk to our doctors about things we wouldn't tell anyone else, and say things in business meetings we wouldn't say in public. We use pseudonyms to separate our professional selves from our personal selves, or to safely try out something new.

Facebook's CEO Mark Zuckerberg showed a remarkable naïveté when he stated, "You have one identity. The days of you having a different image for your work friends or co-workers and for the other people you know are probably coming to an end pretty quickly. Having two identities for yourself is an example of a lack of integrity."

We're not the same to everyone we know and meet. We act differently when we're with our families, our friends, our work colleagues, and so on. We have different table manners at home and at a restaurant. We tell different stories to our children than to our drinking buddies. It's not necessarily that we're lying, although sometimes we do; it's that we reveal different facets of ourselves to different people. This is something innately human. Privacy is what allows us to act appropriately in whatever setting we find ourselves. In the privacy of our home or bedroom, we can relax in a way that we can't when someone else is around.

Privacy is an inherent human right, and a requirement for maintaining the human condition with dignity and respect. It is about choice, and having the power to control how

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Solutions for the Rest of Us

Surveillance is both a technological and a legal problem. Technological solutions are often available to the user. We can use various privacy and anonymity technologies to protect our data and identities. These are effective, but can be thwarted by secret government orders. We need to fight the political battle as well.

Political solutions require group effort, but are generally limited to specific countries. Technological solutions have the potential to be global. If Microsoft designs its Windows operating system with ubiquitous file encryption, or if the Internet Engineering Task Force decides that all Internet traffic will be encrypted by default, then those changes will affect everyone in the world who uses those products and protocols.

The point is that politics can undermine technology, and also that technology can undermine politics. Neither trumps the other. If we are going to fix things, we need to fight on both the technological and the political fronts. And it's not just up to governments and corporations. We the people have a lot of work to do here.

DEFEND AGAINST SURVEILLANCE

Law professor Eben Moglen wrote, "If we are not doing anything wrong, then we have a right to do everything we can to maintain the traditional balance between us and power that is listening. We have a right to be obscure. We have a right to mumble. We have a right to speak languages they do not get. We have a right to meet when and where and how we please." If a policeman sits down within earshot, it's within your rights to move your conversation someplace else. If the FBI parks a van bristling with cameras outside your house, you are perfectly justified in closing your blinds.

Likewise, there are many ways we personally can protect our data and defend ourselves against surveillance. I'm going to break them down into categories.

Avoid Surveillance. You can alter your behavior to avoid surveillance. You can pay for things in cash instead of using a credit card, or deliberately alter your driving route to avoid traffic cameras. You can refrain from creating Facebook pages for your children, and tagging photos of them online. You can refrain from using Google Calendar, or webmail, or cloud backup. You can use DuckDuckGo for Internet searches. You can leave your cell phone at home: an easy, if inconvenient, way to avoid being tracked. More pointedly, you can leave your computer and cell phone at home when you travel to countries like China and Russia, and only use loaner equipment.

You can avoid activating automatic surveillance systems by deliberately not tripping their detection algorithms. For example, you can keep your cash transactions under the threshold over which financial institutions must report the transaction to the feds. You can

decline to discuss certain topics in e-mail. In China, where automatic surveillance is common, people sometimes write messages on paper, then send photographs of those messages over the Internet. It won't help at all against targeted surveillance, but it's much harder for automatic systems to monitor. Steganography—hiding messages in otherwise innocuous image files—is a similar technique.

Block Surveillance. This is the most important thing we can do to defend ourselves. The NSA might have a larger budget than the rest of the world's national intelligence agencies combined, but it's not made of magic. Neither are any of the world's other national intelligence agencies. Effective defense leverages economics, physics, and math. While the national security agencies of the large powerful countries are going to be able to defeat anything you can do if they want to target you personally, mass surveillance relies on easy access to our data. Good defense will force those who want to surveil us to choose their targets, and they simply don't have the resources to target everyone.

Privacy enhancing technologies, or PETs, can help you block mass surveillance. Lots of technologies are available to protect your data. For example, there are easy-to-use plug-ins for browsers that monitor and block sites that track you as you wander the Internet: Lightbeam, Privacy Badger, Disconnect, Ghostery, FlashBlock, and others. Remember that the private browsing option on your browser only deletes data locally. So while it's useful for hiding your porn viewing habits from your spouse, it doesn't block Internet tracking.

The most important PET is encryption. Encrypting your hard drive with Microsoft's BitLocker or Apple's FileVault is trivially easy and completely transparent. (Last year, I recommended TrueCrypt, but the developers stopped maintaining the program in 2014 under mysterious circumstances, and no one knows what to think about it.) You can use a chat encryption program like Off the Record, which is user-friendly and secure. Cryptocat is also worth looking at. If you use cloud storage, choose a company that provides encryption. I like SpiderOak, but there are others. There are encryption programs for Internet voice: Silent Circle, TORFone, RedPhone, Blackphone.

Try to use an e-mail encryption plug-in like PGP. Google is now offering encrypted e-mail for its users. You'll lose some search and organization functionality, but the increased privacy might be worth it.

TLS—formerly SSL—is a protocol that encrypts some of your web browsing. It's what happens automatically, in the background, when you see “https” at the beginning of a URL instead of “http.” Many websites offer this as an option, but not as a default. You can make sure it's always on wherever possible by running a browser plug-in called HTTPS Everywhere.

This is not meant to be a comprehensive list. That would take its own book, and it would be obsolete within months. Technology is always changing; go on the Internet to find out what's being recommended.

I'm not going to lead you on; many PETs will be beyond the capabilities of the average reader of this book. PGP e-mail encryption, especially, is very annoying to use.

The most effective encryption tools are the ones that run in the background even when you're not aware of them, like HTTPS Everywhere and hard-drive encryption programs. In Chapter 14, I discussed some things companies are doing to secure the data of their users. Much more is going on behind the scenes. The standards bodies that run the Internet are sufficiently incensed at government surveillance that they're working to make encryption more ubiquitous online. Hopefully there will be more options by the time this book is published.

Also remember that there's a lot that encryption can't protect. Google encrypts your connection to Gmail by default, and encrypts your mail as it sits on its servers and flows around its network. But Google processes your mail, so it has a copy of the keys. The same is true for anything you send to any social networking site.

Most metadata can't be encrypted. So while you can encrypt the contents of your e-mail, the To and From lines need to be unencrypted so the e-mail system can deliver messages. Similarly, your cell phone can encrypt your voice conversations, but the phone numbers you dial, the location of your phone, and your phone's ID number all need to be unencrypted. And while you can encrypt your credit card data when you send it over the Internet to an online retailer, that company needs your name and address so it can mail your purchases to you.

And finally, encryption doesn't protect your computer while in use. You can still be hacked, either by criminals or governments. But, again, this is likely to be targeted surveillance rather than mass. All this means that while encryption is an important part of the solution, it's not the whole of it.

The current best tool to protect your anonymity when browsing the web is Tor. It's pretty easy to use and, as far as we know, it's secure. Similarly, various proxies can be used to evade surveillance and censorship. The program Onionshare anonymously sends files over the Internet using Tor. Against some adversaries, web proxies are adequate anonymity tools.

There are more low-tech things you can do to block surveillance. You can turn location services off on your smartphone when you don't need it, and try to make informed decisions about which apps may access your location and other data. You can refrain from posting identifying details on public sites. When Snowden first met journalists in Hong Kong, he made them all put their cell phones in a refrigerator to block all signals to and from the devices, so they couldn't be remotely turned into listening devices.

Sometimes surveillance blocking is remarkably simple. A sticker placed over a computer's camera can prevent someone who controls it remotely from taking pictures of you. You can leave the return address off an envelope to limit what data the post office can collect. You can hire someone to walk behind your car to obscure your license plate from automatic scanners, as people do in Tehran. Sometimes it is as easy as saying "no": refusing to divulge personal information on forms when asked, not giving your phone number to a sales clerk at a store, and so on.

Some sorts of blocking behaviors are illegal: you're not allowed to actually cover your

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Exhibit 34

**Exhibit
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Schneier on Security

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About Bruce Schneier



I am a public-interest technologist, working at the intersection of security, technology, and people. I've been writing about security issues on my [blog](#) since 2004, and in my monthly [newsletter](#) since 1998. I'm a fellow and lecturer at Harvard's [Kennedy School](#), a board member of [EFF](#), and the Chief of Security Architecture at [Inrupt, Inc.](#) This personal website expresses the opinions of none of those organizations.

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EXHIBIT 35

**Exhibit
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Bruce Schneier

Research paper

Privacy threats in intimate relationships

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Abstract

This article provides an overview of *intimate threats*: a class of privacy threats that can arise within our families, romantic partnerships, close friendships, and caregiving relationships. Many common assumptions about privacy are upended in the context of these relationships, and many otherwise effective protective measures fail when applied to intimate threats. Those closest to us know the answers to our secret questions, have access to our devices, and can exercise coercive power over us. We survey a range of intimate relationships and describe their common features. Based on these features, we explore implications for both technical privacy design and policy, and offer design recommendations for ameliorating intimate privacy risks.

Keywords: intimacy; family; abuse; children; relationships; privacy

Introduction

The information security community tends to focus its attention on a canonical set of attackers: companies tracking our activities online, criminals looking to steal our data, government agencies surveilling us to gather information, and hackers out for the “lulz.” But a huge number of threats are much more quotidian, performed by much less powerful and less technically savvy actors with very different motives and resources. These attackers know their victims well, and have much greater access to their information, devices, and lives in general. We call these attacks *intimate threats*, in which one member of an intimate relationship—a spouse, a parent, a child, or a friend, for example—violates the privacy of the other.

Intimate threats have garnered little explicit attention from the security and privacy communities and from system designers. For example, a recent review of 40 academic analyses of smart home security anticipated 29 different threat actors and 100 different types of threats—but the threat model of a domestic abuser was almost entirely absent across the literature [1]. We argue that these threats ought to be treated as a primary concern.

Intimate threats represent the way a huge number of people actually experience insecurity and privacy invasions every day. These threats are so common as to be treated as routine and often overlooked, but they are experienced much more frequently—and

often with greater direct impact on victims’ lives—than many of the threats that dominate the security discussion. And they disproportionately impact society’s most vulnerable and least powerful people, often including women, children, the elderly, and the physically or cognitively impaired. Though these threats are, by their nature, difficult to definitively quantify, the indicators we have suggest the scope and scale of intimate threats. In one survey, 31% of participants admitted to snooping through another person’s phone without permission in the past year [2]. A recent Pew survey found that the majority of parents check their teenagers’ browsing histories and social media profiles. Forty-eight percent looked through phone records and text messages, and 16% tracked teens’ locations via their cell phones; half reported knowing the password to their teenager’s email account [3]. An NPR survey of US domestic violence shelters indicated that 85% of shelters had worked with survivors who had been stalked using GPS devices, and that 75% had helped survivors who had been subject to eavesdropping using remote tools [4]. A survey in the UK found that 85% of abuse survivors reported being subject to online abuse as part of a pattern of their abuse more generally [5]. Taken together, figures like these suggest that privacy invasions by intimates are pervasive and deserving of focused study.

In addition to being important on their own, intimate threats can be precursors to more traditional forms of privacy and security

threat. Intimate privacy invasions can result in the destruction of valuable or personal data, like financial records or family photographs. They can be the first step in financial fraud. In abusive partner situations, they can be a precursor to physical, emotional, and sexual abuse [6, 7]. And even well-intentioned intimate monitoring can create a slippery slope of acceptability, inuring users to accepting surveillance as a mode of social control in other contexts [8].

Finally, a more systematic consideration of intimate threats stands to benefit socio-technical security research as a field. These threats pose difficult technical challenges, made more complex by the social relationships in which they are embedded—which are marked by different degrees of authority and autonomy within relationships. They present a mixture of motivations for privacy invasion, often including beneficent motivations like protection and care. They pose novel and interesting questions about privacy boundaries: what degree of monitoring is socially and normatively acceptable in intimate relationships, and how system designers might best accommodate divergent and dynamic preferences. Directly addressing these issues extends the field and provides designers with an opportunity to better address real-world situations. In this way, our work fits into a broader scheme of research that prioritizes the sociotechnical and behavioral dimensions of security and privacy across different social contexts, and which recognizes the critical importance of interdisciplinary approaches to developing solutions [9–11].

Our goals in this article are twofold. While emerging research has begun to examine privacy threats within particular intimate relationships, we are aware of no work that synthesizes common characteristics or design considerations of these threats from across intimate contexts. Our first goal, then, is to describe intimate threats as a *class* of privacy problems, drawing out the features that characterize the category. Many of these features involve the violation of implicit assumptions that hold more readily in other contexts of privacy threat. A better understanding of these common features is required to more adequately protect against intimate threats.

Our second goal is to articulate a set of design considerations that is cognizant of intimate threats. These are difficult problems, and our intention is not to prescribe an exhaustive “checklist” that will immunize a technological system against all intimate threats. Rather, we aim to supply researchers, designers, and policymakers with a conceptual toolkit for recognizing and taking these threats seriously, as well as a critical assessment of the design trade-offs they entail.

Monitoring in intimate relationships

An extensive amount of monitoring routinely occurs across many types of intimate relations, from romantic partners, to parent–child relationships, to roommates, to caregivers. Family members, roommates, and close friends often know each other’s whereabouts and with whom the other spends time. Long-term partners often share bank accounts and keep track of each other’s financial activities. Roommates answer each other’s phone calls—regularly on a shared home landline, and sometimes on each other’s cell phones. People living in the same household may share computers, phones, and other connected devices. Intimates might share social media and

email accounts [12]—and even if they have separate accounts, they may know one another’s passwords [13–15]. Depending on how their devices and accounts are configured, they may have access (intentionally or not) to each other’s files, browsing history, and more. Smart home devices are shared by necessity, and give family members access to a great deal of information about each other’s whereabouts and activities.

People may willingly share access to accounts and devices for a number of benign and useful social, cultural, and economic reasons [12, 16]. They may do so as a practical component of household management and communication [16], or because it is cost-effective to pool resources within the family. They may do so to establish and demonstrate intimacy [17] or trust [18, 19] in a partner, or as a condition of access. Personal preferences and cultural expectations further complicate matters.¹ Some partners may desire not only to monitor an intimate partner, but also to *be* monitored, for convenience (e.g., “I like my partner to know when I’m on my way home so we can make evening plans”) [21], for safety (e.g., to inform trusted contacts of one’s location to provide a “virtual escort” while walking alone) [22], or for other reasons. In other contexts, there may be social or cultural assumptions of family access and sharing, often along gendered lines [23, 24]. (In fact, some industry groups have gone so far as to say that because devices are often shared within households and families, device identifiers should not be considered “personally identifying” under privacy laws [25].)

Much of this access is not necessarily nefarious, intentional, or even unwelcome. In many cases, it simply reflects how people choose to organize their households and relationships, and the role of digital technologies within them. But intimacy also presents distinct informational vulnerabilities. Those who sit in intimate relation to us hold unique resources that can be brought to bear to gain access to our data or devices. Intimates may marshal those resources for a variety of purposes, up to and including abuse. And even in non-abusive situations, members of close relationships may find it almost impossible to protect their own privacy interests against one another, thanks in large part to assumptions built into common technical infrastructures.

Intimate monitoring brings unique ethical complications to the fore [26, 27]. In most privacy contexts, there’s little question about the impropriety of unauthorized access. But in intimate settings, some unauthorized access would strike many as warranted—or even required—as a component of a duty of care [28]. Family members have a moral, economic, and often legal responsibility to take care of one another and ensure each other’s safety, security, and well-being; they often leverage data-gathering technologies in doing so. Indeed, there are many cases in which it seems both normatively and practically unfathomable that intimates *not* be privy to one another’s data. For instance, medical and educational data from minor children must be made available to their parents—who bear responsibility for children’s care in both respects—and applicable laws specifically provide that parents should have such access in many cases.²

The fact that intimate information-sharing is widespread and often accepted should not lead us to be unreflective about very real privacy threats within intimate relationships. Rather, it makes it all the more important to consider how intimate privacy threats occur,

1 For an example of such monitoring that many would find abhorrent, see this about women in Saudi Arabia [20].

2 For example, in the USA, the Family Educational Rights and Privacy Act (FERPA) gives parents access to their children’s educational records up until age 18; even after age 18, schools may *choose* to disclose certain

records to parents in some cases (e.g., in cases of an emergency, or if the child is claimed as a dependent) [29]. Indeed, the tension between parental notification and a child’s privacy can be a difficult one for institutions to navigate, as when colleges do not notify parents of children’s psychological difficulties [30].

when they are unwelcome, and how to reason about them conceptually. The line between *watching* and *watching over* is a blurry one. Even in close, loving, and generally functional relationships, privacy invasions can at times be cause for conflict and anxiety [31]. There are no bright-line rules for determining when duties of care and protection override privacy interests in intimate relationships, nor for whether intimate monitoring crosses a line of appropriateness. Intentions can be intertwined in the same monitoring relationship (“I want to see when my wife is on her way home so I can start dinner, but I also want to make sure she isn’t going near X’s house”) and can change over time and circumstance. Variable preferences and norms about data sharing in intimate relationships present special challenges to designing privacy into these systems; they are not a reason to ignore these threats.

Victims of intimate privacy threat typically lack legal recourse. Judges and legislators are generally loath to intervene too strongly in what is often considered the “sacred” space of the intimate sphere, tending to protect the privacy of families vis-à-vis the state rather than privacy *within* the family [32–34]. This is even more true in patriarchal societies that grant men in the family stronger rights and freedoms (e.g., Turkey [35]); in Saudi Arabia, for example, where all women are required to have a male guardian, a government-run website permits men to grant or deny women under their guardianship the right to travel, and to set up notifications so that they receive a text message should a woman in their family try to get on an airplane [20]. In the USA, some legal protections do exist against the most egregious abuses—protections against nonconsensual pornography [36, 37], no-contact orders following episodes of intimate partner violence, and so on—but the law has generally had trouble keeping up with the challenges of digitally mediated intimate abuse [38–40]. And in the contexts of intimate privacy violations that do *not* rise to the level of abuse (like child tracking), the law offers virtually no remedy, often due to the assumption that a caretaker’s preferences are aligned with the interests of the person being monitored [41, 42].

We conceive of intimate privacy threats broadly in this article. Though we use the words “attack,” “attacker,” and “victim” to characterize aspects of these threats, these may sometimes seem to describe normal—even accidental—interactions between people with no specific malicious motivations toward one another. Our use of these words aligns our inquiry with the dominant discourse in security discussions and threat modeling, in which the terms merely indicate who is attacking and defending a system and do not have any moral or pejorative connotations [43, 44]. Many of the privacy invasions we discuss in this article are quite casual; attackers need not necessarily act with bad intent, nor plan to use the information gleaned for abusive or illegal purposes. It may be helpful to conceptualize some intimate threats as *involuntary disclosure* of a victim’s information to an attacker, at times even without the attacker having a specific intent to obtain that information.

Types of intimate attackers and victims

All intimate relationships—and the privacy practices and expectations within them—are different. We characterize here some of the most prevalent relationships that may give rise to privacy threats and summarize some of the existing research that examines each context. The scope of intimate relationships with which we concern ourselves follows Hasday’s definition of intimates as including “dates, sexual and/or romantic partners, and family members such as spouses, parents, and children” [34, p. 6]; we consider in-family

caregivers (e.g., nannies) and friends/roommates, as well. (Hasday argues that no “ideal and unassailable definition of intimacy exists”; like her, we adopt a “working definition” based on common understanding of the term, without firmly fixed boundaries.)

Intimate partners

Privacy threats commonly emerge in romantic partnerships. Significant others may invade one another’s privacy for a variety of reasons, ranging from casual to abusive, over the course of a romantic relationship.

Perhaps the most alarming example of privacy invasion in a romantic relationship is in the case of intimate partner violence and abuse. Nearly one in three women and one in six men will experience abuse at some point over the course of their lives [45]. In an increasing proportion of these cases, abusers use digital tools to perpetuate abuse and control over the victim: tracking a victim’s location, monitoring their communications, harassing and threatening them, and otherwise surveilling or restricting their activities [6, 7, 46, 47]. These behaviors commonly begin in early dating relationships, and often accompany or prefigure other forms of abuse [47].

Abusers have used a variety of digital tools to spy on or exert control over their victims, most of which require minimal technical sophistication. Some abusers use off-the-shelf spyware apps, which are commonly available online and on app stores; these applications run in the background on victims’ mobile phones and computers, reporting their activities back to an abuser surreptitiously [48, 49].

Abusers also make use of a number of commonplace digital tools for abusive purposes. Smart home and IoT technologies such as remote web-enabled cameras, home appliances, thermostats, speakers, and other home sensors can be used by abusers to stalk, harass, and monitor victims and their activities [50, 51]. One company markets a mattress that detects and reports “suspicious movements in the bed” [52].

Even more commonly, abusers rely on the ease of access facilitated by knowledge of the victim’s passwords (sometimes shared under threat, other times voluntarily as a sign of trust [19, 53]), answers to security questions, and other authentication mechanisms. Sometimes authentication can be bypassed altogether—for example, the abuser may be able to keep track of the victim’s communications because they share a family plan for cellular service, or via browser history on a shared computer [46, 54]. Child-tracking apps and employee-tracking apps are easily repurposed for surreptitiously monitoring intimate partners, and there are some indications that their developers are aware of and condone such use [48]. Social media also presents an easy route toward tracking, as many platforms offer up information like a user’s location while posting or an indicator of whether the user is actively on the site. Many shared services record usage history, which can be used to monitor a partner.

Privacy invasions in the context of intimate partner abuse are especially egregious and provide a noncontroversial (and important) rallying point for taking intimate threats seriously. But privacy invasions between romantic partners aren’t restricted to these extreme cases, and we ought to take intimate privacy seriously even in the *absence* of abusive circumstances. For instance, many partners collect data about one another routinely and harmlessly in the context of courtship (e.g., “Facebook stalking” a prospective date), sexual relationships, relationship management, or as a way to “gamify” aspects of romantic love [17, 32, 55, 56]. Many fertility- and pregnancy-focused apps grant partners a degree of surveillance over one another (most commonly, male partners over female partners)

[57]. For example, one service prompts a man to offer his pregnant partner a glass of water if his version of the app suggests she may be dehydrated [32]. Several period trackers issue “alerts” to men when their partners are menstruating; one even provides the capability to track several women’s periods at once, tracking each with a separate password “so when you punch it in, it only looks like you’re tracking her” [32].

In other cases, partners may monitor each other when they doubt the responsibility of each other’s behavior; for example, parents who travel commonly report “checking in” on their partner via web-enabled baby monitor to see if the baby has been put to bed properly. Soberlink, a facial-recognition-augmented breathalyzer, is sometimes ordered by courts as a condition of visitation when one parent has a history of alcoholism. If the alcoholic parent (the “monitored client”) fails to breathe clean, a text is sent to the other partner (the “concerned party”) as an indication that it is not safe for the children to visit that day [58].

Additionally, partners are sometimes “caught” being unfaithful via monitoring unbeknownst to them. For example, the governor of Alabama’s furtive texts to his paramour were being synced to his wife’s iPad [59]. In another story, an Internet-connected smart scale sent the weight measurement of someone’s illicit lover to his partner’s phone [60]. In these cases, there’s a tendency to view the unfaithful partner as a villain who had it coming, rather than as a person whose privacy preferences were disrespected by poor design [12]. But from a privacy-protective perspective, we ought to be agnostic as to the nature of the behavior or content detected, and be fundamentally concerned with how technology may facilitate involuntary information-sharing.

Parents and minor children

Parents routinely monitor their children in the course of caring for them, from infancy (and even beforehand, *in utero*) through adolescence [61]. Some degree of parental monitoring is essential to ensure children’s safety and well-being. Indeed, as parents’ lives become busier, parents are often lambasted or punished for giving children significant autonomy—a burden disproportionately felt by women of color and at the lower end of the socioeconomic scale. Mothers have been charged with child abuse and endangerment for letting their children wait in the car or play in a park unsupervised while they run errands or attend job interviews [62]. This risk of being perceived as a neglectful parent, combined with a lack of social or governmental infrastructure for providing childcare resources, provides an incentive for parents to digitally track their children. Fear-based marketing exacerbates this impetus by cultivating a sense of generalized anxiety in parents—one that can most readily be ameliorated through monitoring [28].

Monitoring often continues well into the teenage years, as different risks become salient to parents. Many parents know the passwords of their children’s accounts and regularly check on their online activities, perhaps as a condition of use [63]. Parents have been held responsible for their children’s illegal file downloads or sexting behavior, creating legal obligations that result from *failing to supervise* teens’ online activity [64, 65]. As discussed earlier, a Pew survey found that most parents engaged in some form of monitoring of teens’ browsing histories and social media profiles, and half had their teens’ email passwords [3]. A separate study found that parents with home-entryway surveillance systems routinely monitor the comings and goings of their teenage children [66]. Parental monitoring software is commonly marketed to aid parents in many of these activities [28, 48]. On the more extreme end of the

spectrum, parents may purchase tamperproof ankle bracelets and GPS monitoring services for “high-risk” teens [67].

The balance between essential caretaking and privacy invasion can be unclear [68, 69]. On one hand, parents have a duty to supervise their children, and implicit authority to place limits on their activities and communications. Parental control apps like Google’s Family Link allow parents to view children’s online activity and device location, under the advertised purpose of letting parents “set digital ground rules to help guide” their children online [70]. On the other hand, some have raised concerns that the normalization of parental surveillance quashes developmentally important childhood freedoms and trust-building—particularly as children get older—as well as children’s freedom of expression and access to information [71–73]. Child monitoring apps like Bark, for example, alert parents when its algorithms detect profanity, sexting, or indicators of depression in a child’s social media or text exchanges [74]. Toys like Hello Barbie record children’s conversations with the doll and, unbeknownst to them, email the audio files to their parents [75]. A recent Google patent proposes that its smart home system can “infer mischief” if its audio and motion sensors detect that children are occupying a room—but are *too quiet* [76]. All have prompted scrutiny from privacy researchers.

Parents may also violate their children’s privacy for reasons wholly unrelated to caretaking. Parents may fraudulently use a child’s identity for purposes of opening lines of credit and other accounts. Though the prevalence of such fraud is difficult to establish empirically, research suggests that when a child’s identity is stolen, their parents are the most likely perpetrators [77].

In other contexts, the tables may be turned: young children may be privacy threats to their parents. Children are often the savviest technology consumers in their own families, and often act as “sysadmins” within them; in the course of this role, they may incidentally or deliberately gain access to detailed digital information about their parents [78]. And children may have motivations to use this information for personal gain—stealing money from parents’ bank accounts, using parents’ passwords to gain access to proscribed media, using their credit cards, and the like. Notably, some authentication mechanisms may be less effective for one’s children for reasons having to do with biological similarity. The chance of a random person unlocking someone else’s Apple’s Face ID—used for authentication on the iPhone X—is only one in one million, according to Apple’s whitepaper on the topic—but “[t]he probability of a false match is different for twins and siblings that look like you as well as among children under the age of 13, because their distinct facial features may not have fully developed” [79]. Indeed, cases of children unlocking their parents’ iPhones with the children’s own faces have been reported in the media [80].

Adult children and elderly parents

As the world’s population ages, a growing number of families find themselves charged with caring for elderly relatives [42]. The corresponding demand for care—along with meager state resource allocations to support such care—leave many families dependent on remote monitoring technologies to make these burdens tractable.

Some families use video monitoring equipment, colloquially known as “granny cams,” to keep tabs on the safety and well-being of elderly relatives [42, 81]. In nursing homes and assisted living facilities, families often deploy web-enabled cameras in residents’ rooms. The use of these cameras is often motivated by concern about the resident being abused or neglected at the hands of staff or another resident [42]. Roughly 10% of elderly adults (across all care

settings) are estimated to be victims of physical, sexual, or psychological abuse, neglect, or financial exploitation [82]. And nursing home residents are considered to be among the most vulnerable: approximately half of nursing home residents suffer from Alzheimer's disease or related dementias [83], and abuse is believed to be significantly underreported among populations afflicted with these conditions [84].

But familial monitoring of elderly relatives presents its own set of privacy threats. The same cognitive impairments that make nursing home residents susceptible to abuse may also make them unable to give meaningful consent to being monitored by a relative. When this is the case, the capacity for consent typically defaults to the resident's "representative," who is most commonly the family member who is instigating monitoring in the first place [42]. A huge variety of intimate activities—including bathing, dressing, medical care, sexual activity, and personal conversations—takes place in residents' rooms. Since 2001, seven states have implemented statutes and regulations governing families' use of cameras there—but the majority of such legislation does not account for inconsistent privacy preferences between the resident and the family representative (nor do they account for potential abuse situations within the familial relationship). Instead, they tend to treat the family member's decisions as a precise extension of the interests of the elderly resident [42].

Alternatively, families may monitor an elderly relative to support "aging in place"—that is, as a condition of permitting the relative to remain in a private home, often alone, rather than moving them to a facility where they would have better access to medical services but might lose desired independence [85]. Cameras are also often used in these contexts, as well as a variety of other technologies that give a family member oversight over the activities of the elderly relative. These commonly include monitoring of health outcomes and behaviors, like adherence to prescriptions (like "smart" pills and pill bottles that notify someone if a family member fails to take medicines on time [86, 87]), safety and mobility issues (like Lifeline systems that detect falls [88]), and a variety of smartphone apps, GPS trackers, and in-home sensor systems that track things like temperature, doors opening and closing, and the presence of visitors [89]. The common denominator among such technologies is a rhetoric of enablement: but for the peace of mind that they ensure, the elderly relative would no longer be able to live independently [90]. As is the case in other intimate relationships, family members' monitoring of elderly relatives is very often motivated by care and a desire to protect. Yet, research suggests that the privacy preferences of monitored relatives often diverge. In one study, adult children of elderly mothers had consistently more favorable views of sensor, camera, and location tracking technologies than their mothers did—but the adult children typically thought they could persuade their mothers to give consent to being monitored [91].

Other caregivers and their charges/patients/dependents

Similar intimate threats arise in the context of paid care work. An increasing amount of intimate care is outsourced to nannies, babysitters, and workers who care for the elderly and infirm. The presence of these workers as intermediaries in care relations introduces further opportunities and incentives for intimate monitoring, as well as additional complexities related to the employment relationship.

These workers may themselves monitor their charges, using the same sorts of tools, and based on the same sorts of motivations, as described above. They may also be the targets of monitoring by their employer (or by a government agency that subsidizes the care)—to ensure that they do their work to a satisfactory level, to allay

concerns that they may steal from the household, and to ensure the safety and health of their charges [92]. This monitoring commonly occurs via nanny cams and distributed surveillance platforms like Nannysightings.com, through which parents can report to one another on caregivers' behaviors [28]. Extensive monitoring can also occur in the context of hiring and screening caregivers: the service Predictim, for instance, analyzed prospective babysitters' social media histories in order to predict their propensity for drug abuse and bullying (before Facebook and Twitter curtailed their access to do so) [93].

Besides being attackers or victims of attacks themselves, paid caretakers can also be used as a justification for more monitoring of the dependent by the person who contracts for their care. For example, the threat of abuse at the hands of nursing home workers is used as a justification for putting elderly residents on cameras monitored by family members (despite the fact that most elder abuse is perpetrated by family members, not care workers), potentially resulting in invasions of the elderly resident's privacy by their family [42, 81]. Similarly, some day-care centers offer web cameras for parents to monitor the type and quality of care their children receive (see, for example, [94]).

Friends

Of course, privacy threats can also arise within friendships. Friends often share intimate details of their lives with each other; in fact, the willingness to reveal private information to one another can be understood as an indicator of trust and closeness in the relation [8]. Friends may be roommates and share common physical space. But as with other sorts of intimate relations, friends can be controlling and retaliatory, and friendships can sour. As such, they can share many of the same characteristics as other intimate relationships.

This class of risk can be further exacerbated by the inexperience and naïveté of youth, and by the transitory nature of friendships and partnerships among teens and tweens [53]. Young people manage, define, and maintain their relationships with one another by differentiating the access they allow to some friends versus others (e.g., allowing some friends—but not others—to know one's location on a "Find My Friends" app) [8].

Common features of intimate threats

Having reviewed various relations in which intimate threats can reside, we turn now to drawing out features that frequently characterize intimate threats across these relational contexts, as described in existing research—many of which set them apart from traditional privacy contexts. Clearly, individual situations will vary; these features will be present and more or less salient in different relationships. We enumerate four such features here, and in the following section describe their implications for policy and design.

Feature 1: Attackers may have multiple motivations—including beneficent ones—often tied to emotion

Attacker motivations in intimate settings are often very different than in other privacy contexts. Although there are certainly instances of intimates stealing money and other things of value from each other, in general, intimate attacks are more likely to be motivated by an attacker seeking knowledge of, and possibly control over, another's behaviors [95]. Sometimes these motivations are premised on positive inclinations like love, caretaking, and perceived protection from internal and external dangers. There may be a strongly held (and legally supported) sense of duty to "look after" intimate

relations, and privacy invasions may be justified as being “for their own good”—particularly when one party is much more vulnerable, like a child, elderly adult, or a family member with reduced physical or cognitive capacity.

In other cases, the motivation may be control for control’s sake, jealousy, or fear. In abusive situations, the motivations may be a desire to cause emotional or even physical harm, retaliation for a perceived wrong, or preventing a victim from seeking help or extrication from the situation [6]. On both ends of the spectrum, emotion plays a strong role in motivating behavior, and advertising often plays on those emotions to market monitoring tools [28].

These emotional motivations mean that normal considerations about whether an attack is “worth it” can fail in the context of intimate relations. Because an attacker may be motivated by a range of factors—ranging from deep love and care to obsession, jealousy, or desire for control, and with a good deal of variation in individual, cultural, and relational preferences—dispassionate, rational cost-benefit analysis of threats and resources is unlikely to be easily applied to intimate threats. One of us (Bruce) remembers that as a child he once brute-forced a combination padlock in his house. A four-digit lock’s 10,000 possible combinations might be enough to keep out a burglar, but fail against a child with unlimited access and nothing better to do that day.

Feature 2: Copresence facilitates device and account access

In many privacy contexts, attackers and victims are assumed, at least implicitly, to occupy physically separate spaces. Physical separation helps to ensure that authentication mechanisms and access credentials create security. This assumption rarely holds true in intimate relationships. We borrow here from Goffman’s use of the term *copresence* to describe situations in which two actors share physical space, facilitating “rich[] information flow” between them such that people “are close enough to be perceived in whatever they are doing” [96, p. 17]. In intimate relationships, people very commonly share physical space—they live together in households, spend time together in public and private settings, and otherwise have high degrees of physical access that facilitates information transmission about each other. Copresence has a number of implications for intimate threats, as we describe here.

Shared physical spaces and proximity among threat, victim, and devices create different vulnerabilities than those threats premised solely on remote digital access [46]. Copresence allows attackers to access a victim’s devices physically, facilitating information visibility (including “over the shoulder” threats such as reading the victim’s screen, watching them enter their passwords, and so on [19, 54, 97]), as well as easier installation of spyware [48]. Many smartphone apps default to presenting messages and communications on the phone’s locked screen, a potential vulnerability if a user’s intimate also has access to the physical device. Other information may be transmitted through jointly used resources in a shared space: a family might have a single shared computer, or a common backup system for all the household’s computers.

Copresence can also reduce the effectiveness of security measures like two-factor authentication. The most common second factor is a smartphone, to which intimate attackers often have at least intermittent access. This can enable them to read any one-time access codes displayed on the locked screen. Copresence can even defeat biometric authentication. In one published incident, a woman unlocked her

husband’s smartphone by placing his sleeping hand on the fingerprint reader [98].

Further, copresence compounds the forms of attack to which a victim is vulnerable. Unlike a physically distant privacy threat whose access to the victim is entirely digital,³ an intimate attacker may expose a victim to other forms of attack, like physical, sexual, emotional, and financial abuse. In some cases, to avoid escalation via other abuse vectors, victims’ advocates may advise a victim *not* to cut off the abuser’s digital access, because doing so can lead to escalation of abuse in other forms [6]. Counterintuitively, then, it may be in the victim’s best interest *not* to immediately ameliorate digital threats, or even to indicate their awareness of them.

Finally, because many people are involved in family relationships, attackers may leverage *other* co-present family members in the service of monitoring another. For example, some survivors of intimate partner abuse report that even if they maintain digital security on their own devices, they can be indirectly monitored via devices controlled by a shared child [46].

Feature 3: Intimate relationships have inherent, dynamic power differentials, backed by explicit or implicit authority

Privacy invasion often accompanies and extends existing vectors of relational power [6]. In many cases, the monitored party has relatively less power in the relation by virtue of age, various forms of dependency (legal, financial, and so on), social norms (men having authority over women in some cultures), or reduced capacity (children, victims of intimate partner violence, elderly adults with dementia, and so on). Intimate threats are very likely the threats most frequently experienced by women, children, and those with disabilities. Power dynamics are also likely to change over time—as the nature of a romantic relationship changes, as children age, as an adult’s cognitive abilities decline and he becomes more dependent on caregivers, and so on.

In many cases of intimate threat, the attacker has decision-making authority over the victim: granted either explicitly by law, or implicitly by the design of the system. Examples of explicit authority are parental rights and responsibilities to access a child’s data or to vicariously consent to monitoring on that child’s behalf [99], or a power of attorney for someone with diminished capacity. This authority may undermine consent-based models of privacy protection: the attacker both has authority to consent on behalf of the victim and *is themselves* a threat to the victim’s privacy, creating a circular (and nonprotective) situation [42]. And some legal frameworks explicitly permit or require data sharing between intimates, like the provision of student data to parents under FERPA, court-ordered alcohol monitoring for parental visitation, or state statutes that permit families to record their loved ones in nursing homes.

An attacker’s authority may also be implicit, based on ownership or expertise. For example, the person who pays for a phone family plan may have the capability of accessing data for all users. Decisions about installation and use of smart home monitoring systems are often driven by the individual in the house with the most expertise and control over the household; Geeng and Roesner [100] found that these decision-makers often didn’t consult other members of the household about these decisions because “they did not consider them equal decision-makers in the home.” Power differentials also imply that coercion can be an important enabler of surveillance

3 But see some complications of this in contexts like swatting.

in intimate relationships. Intimate attackers can coerce or threaten their victims to keep their smartphones unlocked, divulge the passwords to their social media accounts, or enable location tracking [101].

Feature 4: Attackers may bring deep knowledge resources to bear in order to exploit relational vulnerabilities

Privacy infringements in intimate relationships tend to be technically simple. They can involve no more than using readily available device and account interfaces, and attackers need not have great technical skill to execute attacks. But what these attacks lack in technical sophistication, they make up in relational complexity. Simply because of their extensive knowledge of the victim, intimate attackers have deep relational resources that they can leverage in several ways.

Attackers may use intimate knowledge of the victim to gain access to accounts [46]. Much of this information is shared willingly during a relationship and may be shared without consent afterwards. Intimate social knowledge negates certain forms of authentication, which often rely on knowledge of a person's history and social life, under the assumption that attackers would not have access to such information. Some banks authenticate users by asking them for prior addresses; security questions often seek information like a mother's maiden name, a favorite pet or teacher, or a birthday. These types of information, of course, are commonly shared with one's intimates. One of Facebook's backup authentication systems involves showing the person photographs of people and requiring them to accurately identify the ones they know [102]. This is something an intimate partner or family member can do as well. In one recently publicized incident, an Australian woman's ex-boyfriend stalked her with the assistance of an app integrated with her vehicle, which reported her location to him; because he'd helped her purchase the vehicle, he had access to the car's registration information [103].

What's more, thick relational ties complicate amelioration of privacy threats, and create leverage for the attacker. A distant hacker likely has no knowledge of a person's immigration status, health conditions, or personal "dirt" that can be exposed to others online; an intimate associate has access to all of these [6]. Partners may also have access to intimate photos of each other, enabling revenge porn. Control over a spouse's finances, a child's curfew, or an elderly relative's ability to live at home further gives the intimate attacker control; all of these may be conditioned on intimate monitoring, further complicating consent and amelioration.

Implications for policy and design

While many of the threats we have described here are technically unsophisticated, we should not misread this as an indication that they are easy to solve. The social complexity and heterogeneity underlying intimate threats make them very challenging to address technically—which is, perhaps, why they are often ignored by engineers and designers. (Other researchers have pointed out the very low proportion of cybersecurity professionals who are women and minorities, and have suggested that this lack of representation may also lead to underemphasis on threats predominantly experienced by those groups [104].) Intimate privacy invasions are often diffuse and covert, unlike the high-profile data breaches regularly reported in the news and may therefore also garner less attention and concern in system design.

Some aspects of this problem must be mitigated by law and policy. A recent Citizen Lab report on stalkerware concluded with a list of detailed policy recommendations to regulate that industry [49]. Further, we need increased penalties for abuse cases that include digital tracking. Eva Galperin of the Electronic Frontier Foundation has called on US law enforcement to prosecute stalkerware companies on hacking charges [105]. Legal scholar Danielle Citron has also articulated a policy agenda to increase civil and criminal penalties against these companies, and to increase digital forensic training for state and local agencies [38]. Some laws have attempted to criminalize the usage of more general IoT devices for surveillance purposes.

The degree to which system designers should be held morally responsible—or legally liable—for every misuse of the technologies they develop is a policy question without easy answers, particularly for general purpose technologies put to unintended uses, and we do not attempt to address it here. However, by taking intimate threat models seriously from the outset, system designers can take some steps to proactively mitigate the risks of intimate partner threats. Importantly, many forms of design may have important roles to play in this mitigation, from visual aspects of a user interface to core system functionalities, and including both the design of physical "things" and of information flows and processes [106].

All engineering involves trade-offs, involving both security and functionality. The same capability that allows a parent to monitor where their child goes online can also allow a spouse to monitor their partner. And some attacks simply can't be detected by technology: a remote website, for example, will very likely not be able to tell when someone is authenticating under the duress of threatened physical violence from an abuser. It is not our intention to demand that system designers prioritize intimate privacy threats ahead of all other design considerations. Rather, by bringing to the fore considerations about an underspecified privacy threat, we suggest that designers take into account the concerns described in this article during systems design, understanding that they will need to be weighed against other goals and requirements.

Figure 1 offers a heuristic for understanding common relationships between the features of intimate threats and their design implications. It summarizes the four common features of intimate threats we have described in the previous section, and how recognition of these features might inform more thoughtful design. We offer the heuristic not as a definitive, exhaustive list, but as an analytic guide for assessing the risks of intimate threats, the resources they bring to bear, and potential remediations against them. We also do not claim that any one feature is necessarily *exclusive* to intimate threats—indeed, some are shared by other contexts of insider attack, for example—but we believe the constellation of features we describe here is distinctive enough to merit treating intimate threats as their own class of privacy threat.

With all this in mind, we offer the following general design considerations, drawing from the common features we have enumerated, for system designers to help prevent and ameliorate intimate threats.

Implication 1: Recognize privacy in intimate contexts as a balance among multiple interests and values

As we have discussed, some degree of monitoring is inevitable, desirable, and perhaps even necessary in intimate relationships. Designing for intimate privacy means acknowledging this and finding ways to balance among legitimate interests in privacy protection, safety and caretaking, trust and closeness, and authority—while also

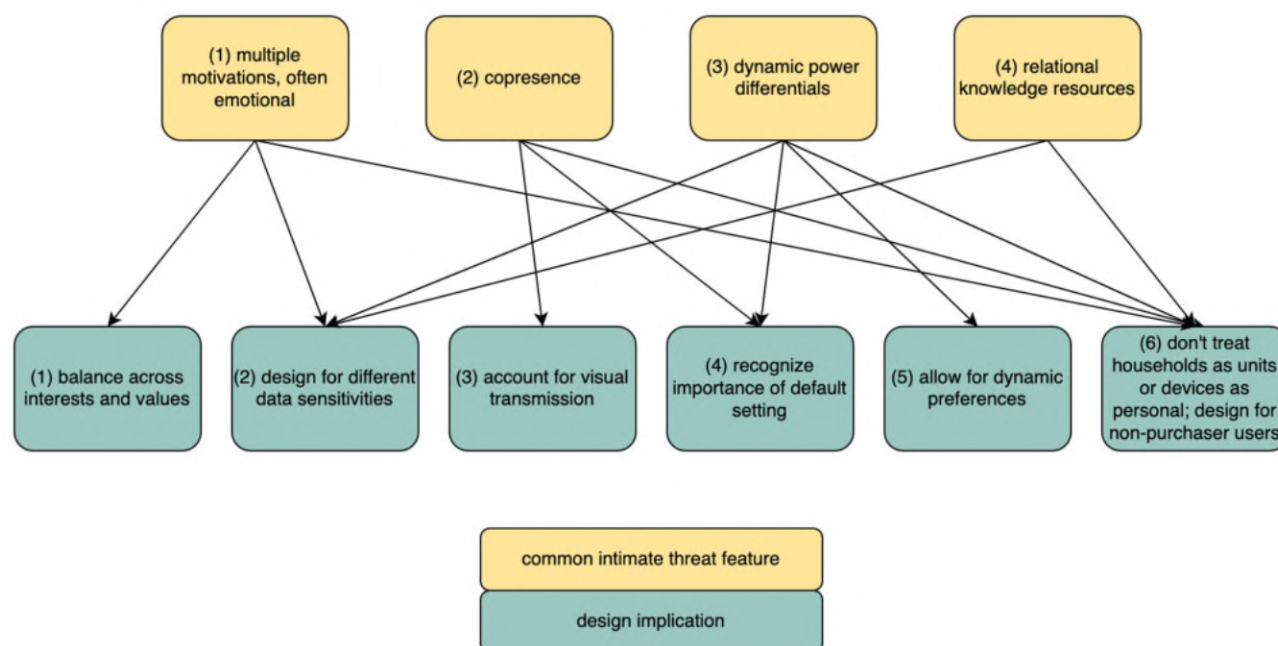


Figure 1: Some common features of intimate threats and their design implications. The list offered here is non-exhaustive but offers a heuristic for thinking about designing with intimate threats in mind. The arrows in the diagram are intended to indicate what design considerations we consider to be especially salient in the presence of particular threat features.

acknowledging that these interests may carry very different weights across different relationships, cultures, and points in time.

There are some good examples of tools that strike this difficult balance well. For example, License+ is a teen driver monitoring app that aims to provide parents with “just the right amount of information so they can stay up-to-date...and the driver doesn’t feel spied on” [107]. This is accomplished by giving parents access to a teen’s city-level location data (not finer-grained GPS coordinates) and bounding use of the app to 100 total hours—enough to coach new drivers into good practices, but not enough to surveil them indefinitely. The design of the app recognizes parents’ legitimate interests in their children’s safety, but balances that against a teen’s desire for privacy. Balancing these competing interests is difficult and context-specific; a good first step is simply to specify and acknowledge the values at stake and how they may be in tension with one another.

Implication 2: Recognize different data sensitivities to intimate threats

Intimate threats may have impacts on the types of data that require extra protection. For example, location data, friends lists, calendar data, and communications are likely targets for an intimate attacker, who wants to know where the victim is and with whom they are talking [108]. Data that are normally considered sensitive (like financial account numbers and identification information) may or may not be as salient given an intimate attacker’s motivations.⁴

Intimate attacks can also intersect with more conventional privacy concerns in non-obvious ways. For example, a victim might regularly receive confidential information in the course of their work: for example, as a doctor, lawyer, or therapist. This information might be accessed as part of an intimate attack, and then either disclosed or used as a coercive lever. Traditional threat models often

fail in these contexts, and system designers should consider whether they have addressed threats against sensitive data from an intimate perspective, and not just a financial or political one.

Implication 3: Evaluate what information may be inadvertently transmitted through visual display

As we have discussed, some intimate privacy threats occur by virtue of copresence between victim, attacker, and device. Designers should be attentive to what information is displayed visually on the user interface, recognizing that this can be a vector for a privacy breach. Such disclosures are likely to be inadvertent on the part of the user, and information may be actively or passively received by an intimate adversary. In either case, these common disclosures demonstrate how a device can inadvertently divulge information that its owner may prefer to keep private [110, 111].

For example, most mobile operating systems display the content and sender of text messages on the lock screen of a device by default, as well as playing an audio alert indicating that a message has been received. When another app is in use, iOS displays an incoming text as a notification at the top of the screen. Operating systems on laptop and desktop computers also commonly display headers of incoming emails, text messages, Twitter direct messages, or other forms of contacts on-screen as they come in. Such design choices, while intended to be convenient for users, often lead to disclosures of private information when a device screen is in view of another person. Because such notifications typically “push” instantly upon receipt of a message, they further reduce a user’s capacity to manage her privacy temporally (e.g., receiving notifications when she can view them without the presence of an intimate).

Targeted online ads are another example. Much can be inferred about a person’s interests and characteristics based on what ads are

⁴ However, see findings suggesting that users have similar reported data-type sensitivities for insider (i.e., friend) access as stranger access [109].

targeted to them. If a browser is shared between family members, ads may “follow” a user around the web and could, quite by accident, reveal to subsequent users what sorts of things a parent, child, or intimate partner has been searching for [112]. Predictive features can also be revealing if viewed visually. Many systems predict recipients of communications based on previous activity. iOS suggests recipients of texts based, presumably, on the frequency and recency of contacts with them; Google Inbox’s interface similarly suggests frequent contacts when new messages are being composed. Predictive text within conversations can be similarly disclosive. For instance, iOS’s personalized autocorrect dictionary learns and suggests proper names, such as contacts’ names, which may reveal information about a user’s communication *patterns* should another person see or use the device.

When Firefox first introduced its private browsing feature, it was indicated by a purple bar across the browser window. This could be easily noticed from across the room, making it harder for someone in the same physical location as another to use the feature without it being obvious. Firefox has since changed the indication to a more discreet purple circle in the upper-right corner of the browser window. Apple’s Safari is still problematic: when the user enables private browsing, the normally white address bar turns grey. A better design would be to allow the user to disable any visual indication of private browsing. Other researchers propose inconspicuous forms of data entry, including haptic modalities and coded information [113].

There are other contexts in which designers are attentive to visual privacy invasion without significantly impeding usability. ATMs are designed with keyboard blockers to allow PINs to be entered privately; most websites mask entered passwords as bullets to prevent them from being revealed to screen onlookers [97]. Security mechanisms for the visually impaired are particularly attentive to visual and aural eavesdropping; Azenkot et al. [114] developed a multi-touch authentication method to protect against these risks. Google researchers developed a facial-recognition-based security feature to alert smartphone users when a gaze other than the user’s is detected looking at the screen [115]. Mac laptops turn off visual notifications when the display is being projected externally, in recognition of the fact that users showing their screen to a group likely do not want their private messages displayed. The NCAA built a “boss button” into its March Madness streaming site: if employees are watching basketball at work and the boss walks by, they can click the button and an unremarkable spreadsheet pops up temporarily to create the appearance of productivity [116]. Similar “escape” features appear on some intimate partner violence resource sites, to take the user to a generic webpage should an abuser walk into the room.

Implication 4: Recognize the importance of default-setting and the “blank slate” problem

Privacy defaults are important in all contexts: in general, people are unlikely to change the default settings of a system or service, due to inattention, lack of awareness, or technical difficulty. But in intimate contexts, default-setting is even more important. The launch of Google Buzz in 2010 serves as an illustrative example of the power of defaults. This early microblogging service automatically created a circle of friends for new users based on their most frequent email and chat contacts in Gmail. This was a privacy disaster for many in (or having left) abusive relationships, in some cases leading to physical endangerment for abuse survivors [117]. Having a different default would have prevented this problem from arising.

Furthermore: in intimate contexts, even when disclosive settings can be manually overridden by the user, overriding a default can *itself* create suspicion that the user has something to hide [6]. In most contexts, if an attacker compromises an account or device, we advise the victim to change the access credentials, to open a new account, to cut up the credit card, or otherwise to insulate themselves from the invasion. But in intimate contexts, this is fraught advice, given its limited effectiveness and the risks of escalation. Changing settings to protect one’s privacy might be a dangerous “tell,” signaling that the victim does not trust the attacker. Therefore, even taking steps to protect oneself against privacy invasion can create danger.

We call this the “blank slate” problem: removing an attacker’s access to data, without plausible deniability, may be the worst thing one can do. In abusive relationships, enabling additional privacy protections may result in escalating levels of abuse, thus further endangering the victim. The assumption that one has nothing to hide and thus will not take steps to protect their privacy is an example of what Marques et al. [19] term “performative vulnerability”: taking too many affirmative steps to prevent another’s access suggests a lack of trust. The same can be true of explicit conversations about access expectations. Stuart Schechter points out that “least privilege may be among the most sacred and respected principles of information security, but starting a conversation on appropriate use of household resources by informing children that their privileges are restricted to a prescribed set of allowable behaviors is a sure way to incite or escalate a conflict” [118]. More generally, the lack of trust that is often the foundation of an effective privacy policy can actively erode relations between intimate partners, family, and friends.

In this vein, Griggio et al. [55] advocate for allowing “discreet changes to privacy preferences” to avoid the unwanted communicative aspect of turning on a privacy setting against an intimate partner. Apple’s iOS offers an example in clear contravention of this advice. When Alice takes an affirmative step to stop sharing her location information with Bob, Bob is explicitly notified in the iMessage chat that “Alice has stopped sharing location with you.” This setting, which is not to our knowledge overridable by users, may pose real danger to users trying to protect themselves from intimate threats.

Implication 5: Recognize that privacy and sharing preferences are dynamic

System designers should take into account that sharing preferences will change: couples will break up, children will grow up, roommates will move in and out [12, 100]. Over the course of relationships, intimates’ uses of technology and their sharing and privacy preferences are likely to evolve to best suit their current relational aims. And more broadly, sharing norms and societal privacy expectations change over time. Technologies that fail to allow for change run the risk of ossifying outdated privacy expectations to the detriment of users’ current preferences.

This fluidity has two primary implications for designers. First, to the greatest extent possible, systems should accommodate changes to preferences. The ability to make discreet changes to privacy settings, discussed above in implication 4, is one aspect of this flexibility; designers may also take steps to avoid the ossification of sharing preferences, for example, by periodically prompting users to ensure that preferences have not changed and that they are aware of what is being shared.

Second, intimate privacy threats often become most salient at discrete moments of relationship transition [7, 54]. Systems should support users when they try to separate joint accounts and help account owners monitor their accounts for login attempts by ex-partners. This means recognizing and accounting for changing privacy preferences over time, not just at the discrete moment of account setup. Facebook has taken some positive steps in this regard. When a user changes their relationship status on the site to indicate a breakup, Facebook proactively displays a prompt asking them if they wish to adjust privacy settings with respect to the ex-partner (for example, hiding future posts from their ex, untagging their ex in past posts) [119].

Implication 6: Realize that households are not units; devices are not personal; the purchaser of a product is not its only user

System designers build in assumptions about intrafamilial privacy expectations, and often treat a household as a “unit” for purposes of information sharing. These assumptions are incorrect if a privacy threat comes from within one’s own household. Often when an account is shared (a cell phone family plan, a TV streaming subscription, a smart home service, health insurance coverage), all users’ data associated with that account is accessible to whoever is responsible for payment. But this need not be the case. For example, a single Netflix account is regularly shared amongst an entire household, even though individual users may watch content on different screens. Netflix’s security architecture supports multiple profiles in one account, but there is no privacy between them [120]. On the other hand, YouTube TV also supports multiple profiles, but allows those profiles to be individually password-protected, enabling people in a household to better balance their individual needs for sharing and privacy (see also [121]).

Similar failures may occur when households share common channels for information transmission. This often arises when information collected from Internet use is transferred to the real world. Unsolicited email is delivered to an individual email box, while unsolicited paper is delivered to a (shared) household physical mailbox. This difference was illustrated in a widely read privacy anecdote where Target Corporation deduced that a young woman was pregnant and sent her a paper flyer with baby-related offers, alerting the woman’s father to the pregnancy before she told him [122]. Similarly, Pakistani law enforcement assures legal adult victims of cyber-harassment of confidentiality when they register complaints online, but then delivers further communication to the victim’s house—which is predominantly a family home [123]. A similar issue can occur in cars, which increasingly offer a Bluetooth interface to connect with the driver’s phone—and may announce when and from whom a driver receives a text message or a phone call, despite the fact that the car is often a shared space. Smart home technologies present particular challenges in this regard; taking steps like providing visible indicators of data capture (e.g., lights that flash when audio or video is being recorded) can be one way to allow multiple users with divergent privacy preferences to better protect their privacy interests vis-à-vis one another [100, 124].

The converse of the above assumption is that devices considered “personal” are used by only one person. But abundant research demonstrates that this is often not the case, and that device sharing can facilitate unwanted information disclosure [16, 125]. For example, many user interfaces offer seamless integration of content across devices, under the apparent assumption that each of a user’s devices will be used by that user alone. For instance, if a user has an

iCloud account to which two devices—say, an iPhone and an iPad—are registered, iOS will by default sync iMessages across both devices. But in a family, devices are often shared, rather than being used solely by one iCloud registrant. The seamlessness of this integration fails to realistically reflect typical device usage patterns, and can facilitate inadvertent disclosures in so doing.

System designers should design with *all* potential users’ privacy in mind. Companies have a market incentive to build devices for the benefit of the paying customer. But if the use of a device increases privacy risk to another person who is *not* the direct customer, the interests of that person must be protected as well.

Most fundamentally, data access should not be covert. An app to monitor a loved one’s cell phone that has no visible icon seems more likely to be used without consent than one that reveals itself [48]. Another approach to preventing covert access is to leave an “access trail” letting users know when their data has been viewed. For example, in Norway, all salary data is public—but searches can’t be conducted anonymously, and people can see who has viewed their salary [126]. Facebook employees similarly get a “Sauron alert” from the company if a colleague accesses their account [127]. Though measures like these do not prevent access, they do prevent *covert* access, making it more likely that privacy preferences will be governed by social and relational norms. Improving the discoverability of monitoring is not a silver bullet to the problem of intimate privacy threat, but it can be a useful tool to help prevent and provide recourse against unwanted surveillance.

Conclusion

Data gathering in intimate relationships is likely to increase in the near future, both due to the increased digital traces on social media and the proliferation of data-gathering devices in homes. An enormous number of consumer IoT products are explicitly marketed for the protection, supervision, and care of intimates [28]. Even IoT devices that are not specifically so marketed often allow us to draw inferences about an intimate’s activities, and often without their awareness [128]: web-enabled security cameras that capture the behaviors of anyone in the home [129], or the sleep tracker that records the activities of anyone using the bed [52]. The growth of this consumer market and the continuing normalization of monitoring across intimate relationships makes this a class of threats to be taken seriously.

There are some signs that intimate threats are beginning to be recognized by the tech industry. For example, Kaspersky recently announced an effort to alert users to the presence of stalkerware apps covertly installed on Android products [130], and Google made some efforts to scrub similar apps from its Play Store following research about their prevalence [48]. We take heart at these developments, but suggest that consideration of intimate threat models should be more thoroughly integrated into system design broadly, rather than only in response to the most egregious apps for covert intimate monitoring.

Addressing these threats not only extends the field of cybersecurity to meet the needs of vulnerable communities, but also brings it into fruitful dialogue with other disciplines and modes of inquiry. It requires an integrated sociotechnical approach to understanding privacy. It requires focusing our attention both on new problems and new tools for addressing them, taking seriously the social and cultural sites within which technologies and users are situated, and acknowledging the full range of harms privacy threats can pose. It requires thinking more broadly about how we design secure systems.

By recognizing the class of intimate threats and characterizing their common features, we can begin to articulate design principles to address them.

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Exhibit. 36

**Redacted Version of
Document Sought to be Sealed**

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CHASOM BROWN,
Plaintiff, Case No.
vs. 4:20-cv-03664-YGR-SVK
GOOGLE LLC,
Defendant.

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ZOOM VIDEOTAPED DEPOSITION OF
JONATHAN E. HOCHMAN

July 20, 2022

10:15 a.m.

TAKEN BY:

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ATTORNEY FOR DEFENDANT

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JONATHAN E. HOCHMAN
MR. ANSORGE..... 10

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1 profile of users"? 13:24:35	1 maintains a complete cradle-to-grave 13:26:39
2 A. I think I've heard that before. 13:24:38	2 profile of users? 13:26:39
3 Q. And what's your understanding of 13:24:39	3 A. Yeah, in my report -- 13:26:39
4 that phrase? 13:24:41	4 (Reporter clarification.) 13:26:43
5 A. The way I would describe it is 13:24:45	5 MR. MAO: Objection, asked and 13:26:43
6 that, as applies to this, is that Google 13:24:46	6 answered. 13:26:46
7 is logging -- collecting, logging, 13:24:53	7 Go ahead. 13:26:46
8 whenever it can, all the activity of users 13:24:56	8 A. So in my report, I opine that 13:26:47
9 from when they first start, on and on and 13:25:00	9 Google tracking beacons, which are located 13:26:51
10 on. 13:25:04	10 on at least [REDACTED] of websites, by 13:26:56
11 Q. You do not use the phrase 13:25:08	11 some measure, consistently beam 13:27:00
12 "complete cradle-to-grave profile of 13:25:10	12 information back to Google, including a 13:27:06
13 users" in your report, correct? 13:25:14	13 indication of the content that the user is 13:27:12
14 A. I'll take your word for it. 13:25:15	14 viewing, specifically the URL, among other 13:27:14
15 Q. And you do not opine that Google 13:25:16	15 information, that this is consistently 13:27:18
16 maintains a complete cradle-to-grave 13:25:20	16 done by the tracking beacons I've 13:27:20
17 profile of users, correct? 13:25:25	17 mentioned, that it's done the same for all 13:27:24
18 A. By the way, when you said 13:25:26	18 the users, whether they're in incognito 13:27:26
19 "report," I'm thinking of the opening 13:25:27	19 mode or regular mode. And I am saying -- 13:27:32
20 report. 13:25:29	20 when I say "the users," I mean the users 13:27:35
21 Q. In either report. 13:25:29	21 in class 1 or class 2. 13:27:37
22 A. In either report. I'll take 13:25:31	22 BY MR. ANSORGE: 13:27:43
23 your word for it. Okay. 13:25:32	23 Q. And that wasn't my question, 13:27:44
24 And then the next question was? 13:25:33	24 Mr. Hochman. 13:27:46
25 Q. You do not opine that Google 13:25:35	25 A. I think it was. 13:27:50
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1 maintains a complete cradle-to-grave 13:25:36	1 Q. My -- do you opine anywhere in 13:27:51
2 profile of users, correct? 13:25:39	2 your report that the information from 13:27:55
3 A. Well, I believe that Google is 13:25:41	3 these individual tracking beacons is 13:27:58
4 engaged in complete cradle-to-grave 13:25:44	4 correlated into a single cradle-to-grave 13:28:00
5 profiling of users. I haven't used that 13:25:49	5 profile of class 1 or class 2 members? 13:28:04
6 word formulation, but I believe that 13:25:50	6 MR. MAO: Objection, asked and 13:28:07
7 that's true. 13:25:51	7 answered. 13:28:08
8 Q. What is your understanding of 13:25:52	8 A. All right. So the data comes in 13:28:13
9 the distinction between "profile" and 13:25:54	9 and is stored by Google, and it is stored 13:28:15
10 "profiling"? 13:25:58	10 with a sufficient amount of identifiers, 13:28:18
11 MR. MAO: Objection, 13:25:59	11 cookie identifiers, fingerprinting data 13:28:23
12 argumentative. You're harassing the 13:26:00	12 that it can be linked up. 13:28:29
13 witness. 13:26:02	13 And I've shown even, using the 13:28:33
14 MR. ANSORGE: It's not 13:26:02	14 data available through the special master 13:28:37
15 argumentative. 13:26:03	15 process, how these records can be linked 13:28:39
16 MR. MAO: May I have the 13:26:05	16 up. And the simple fact that Google might 13:28:42
17 question read back? Maybe I 13:26:06	17 store the data fragments separately is not 13:28:46
18 misunderstood the question. I 13:26:08	18 really consequential because it's not at 13:28:50
19 apologize if I did, Joey. The 13:26:10	19 all hard to link them up. 13:28:54
20 question back, please. 13:26:14	20 BY MR. ANSORGE: 13:28:54
21 (Whereupon, the question is read 13:26:14	21 Q. Your opinion is that the data 13:28:58
22 back by the reporter.) 13:26:14	22 could be linked up, not that it is linked 13:29:00
23 A. I don't agree with you. 13:26:36	23 up; is that correct? 13:29:03
24 BY MR. ANSORGE: 13:26:36	24 MR. MAO: Objection, misstates 13:29:05
25 Q. Where do you opine that Google 13:26:37	25 his testimony. 13:29:06
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1 A. I think that if you were to look 13:29:07	1 sort of creating a -- a question that's 13:31:24
2 at how database systems work, data can be 13:29:10	2 without context so I'm not sure -- 13:31:28
3 stored -- it can be stored in a single 13:29:16	3 Q. Yeah. 13:31:31
4 data structure or it can be separated out 13:29:18	4 A. -- where I'm going to look -- I 13:31:32
5 into pieces, and that doesn't really 13:29:20	5 can search the whole report, but that will 13:31:34
6 matter because Google has the 13:29:23	6 be slow. Maybe you want to draw my 13:31:36
7 cradle-to-grave profile of the user. The 13:29:25	7 attention to something. It will be 13:31:38
8 fact that they might store it in pieces, 13:29:29	8 faster. 13:31:40
9 it would be like if your doctor had a file 13:29:31	9 Q. The problem here, Mr. Hochman, 13:31:40
10 about you and -- but he had it in three 13:29:34	10 is that we're trying to ask you questions 13:31:42
11 different file folders and maybe they were 13:29:38	11 about the limits of your opinions. We 13:31:45
12 in two different file cabinets, but he had 13:29:41	12 have reviewed your report. It is my 13:31:48
13 access to all of them. He's got your 13:29:45	13 understanding that you do not opine that 13:31:51
14 medical history. It doesn't -- it's not 13:29:46	14 Google maintains a complete 13:31:54
15 required that they all be put together in 13:29:47	15 cradle-to-grave profile of users. It is 13:31:56
16 the same manilla folder. 13:29:49	16 my understanding that you do not opine 13:31:58
17 BY MR. ANSORGE: 13:29:49	17 that Google engages in fingerprinting 13:32:00
18 Q. Mr. Hochman, do you opine 13:29:58	18 techniques to build a profile of 13:32:01
19 anywhere that Google stores all of the 13:29:59	19 plaintiffs. It is my understanding that 13:32:04
20 data it receives? 13:30:01	20 you do not opine on domains sharing data 13:32:06
21 A. According to our test, it looks 13:30:06	21 with each other. And what we're 13:32:12
22 like the data that's being transmitted 13:30:08	22 attempting to do is clarify that with you. 13:32:15
23 back to Google by the tracking beacons is 13:30:11	23 So with respect -- if you do 13:32:18
24 being received and stored. We haven't 13:30:14	24 opine on that anywhere, we'd expect you to 13:32:21
25 found yet, and Google hasn't presented 13:30:17	25 at this point inform us and not vice 13:32:23
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1 evidence or information, showing that the 13:30:20	1 versa. 13:32:27
2 data is not being stored and saved at 13:30:24	2 A. Okay. 13:32:28
3 least for some length of time. 13:30:29	3 MR. MAO: Objection, it's just a 13:32:29
4 Q. Mr. Hochman, you do not opine 13:30:38	4 mischaracterization, but I don't even 13:32:32
5 anywhere your report that all the domains 13:30:40	5 think there's a question pending so... 13:32:35
6 that belong to Google all share data with 13:30:43	6 A. That's right, there's not a 13:32:37
7 each other; is that correct? 13:30:45	7 question there. So I'll wait for a 13:32:38
8 MR. MAO: Objection, misstates 13:30:48	8 question. 13:32:42
9 his testimony, the document speaks for 13:30:49	9 (Reporter clarification.) 13:32:43
10 itself. 13:30:51	10 MR. MAO: And we disagree, 13:32:43
11 Go ahead. 13:30:51	11 Mr. Ansorge. 13:32:50
12 A. I'm not sure I understood the 13:30:53	12 BY MR. ANSORGE: 13:32:50
13 question because I think it might have 13:30:54	13 Q. Mr. -- the question was, 13:32:52
14 like a double negative in it. So maybe 13:30:55	14 Mr. Hochman, do you opine anywhere in your 13:32:54
15 can you just say it again so I can be sure 13:30:57	15 report that all the domains that belong to 13:32:56
16 I understand it? 13:31:00	16 Google all share data with each other? 13:32:59
17 BY MR. ANSORGE: 13:31:00	17 A. I mean, I think I'd have to ask 13:33:12
18 Q. Do you opine anywhere in your 13:31:01	18 you to enumerate which domains you're 13:33:14
19 report that all the domains that belong to 13:31:03	19 referring to because -- and are you 13:33:18
20 Google all share data with each other? 13:31:05	20 referring to Google or Alphabet? It 13:33:20
21 A. I may have said something like 13:31:08	21 starts to get complicated. I mean, Google 13:33:22
22 that. I just -- I don't recall if you -- 13:31:14	22 owns a bunch of subsidiaries. They have, 13:33:25
23 if you think that I've said that, you 13:31:16	23 you know, all sorts of companies and 13:33:27
24 could show me where. I don't know that 13:31:19	24 things. I don't think you're referring to 13:33:30
25 I've said the opposite of it, and you're 13:31:21	25 those, so I think we need to narrow it 13:33:32
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1 issue in this case is stored in GAIA logs? 16:16:39	1 report that the private browsing data at 16:18:51
2 MR. MAO: Objection. I just 16:16:44	2 issue in this case is stored in GAIA logs? 16:18:54
3 want to make a standing objection, 16:16:45	3 A. Private browsing data stored in 16:18:54
4 okay? Mr. Ansorge, you're asking 16:16:47	4 GAIA logs. I think the private browsing 16:19:04
5 about documents and data in which 16:16:50	5 data is stored in B logs, not P logs, and 16:19:06
6 Google has been refusing to produce 16:16:52	6 that the B logs and the P logs can be 16:19:11
7 and has been sanctioned for and 16:16:54	7 linked. 16:19:15
8 subject to a pending sanction motion, 16:16:56	8 Q. So the answer would be no, you 16:19:15
9 okay? 16:16:59	9 do not opine anywhere in your report that 16:19:17
10 I'll leave that as a standing 16:16:59	10 the private browsing data at issue in this 16:19:19
11 objection, and I'll just leave it as a 16:17:01	11 case store in GAIA logs, correct? 16:19:22
12 standing objection going forward. 16:17:12	12 A. I like my answer more than 16:19:25
13 Go ahead. 16:17:14	13 yours. 16:19:27
14 MR. ANSORGE: Mr. Mao, I believe 16:17:15	14 Q. Can you point us to any part of 16:19:27
15 you already made that standing 16:17:18	15 your report where you show that the 16:19:34
16 objection earlier. 16:17:19	16 private browsing data at issue is stored 16:19:37
17 MR. MAO: Yeah, and you're not 16:17:20	17 in GAIA logs? 16:19:42
18 standing down, so I have to sometimes 16:17:21	18 A. I haven't asserted that the 16:19:43
19 reassert a standing objection to 16:17:23	19 private browsing data is stored in GAIA 16:19:45
20 remind you. 16:17:26	20 logs. I've said, either in this report or 16:19:46
21 A. Mr. Ansorge, I just also want to 16:17:28	21 in the supplemental report, that the 16:19:48
22 add that if to the extent I'm changing 16:17:30	22 private browsing data is stored in B logs, 16:19:50
23 anything by saying "is linked" versus 16:17:32	23 and that the B logs are linked in a 16:19:54
24 "could be linked," you know, subsequent to 16:17:36	24 variety of manners to the P logs. 16:19:58
25 this opening report being produced, there 16:17:37	25 Q. How are the B logs linked to the 16:20:06
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1 was some additional data that came from 16:17:40	1 P logs? 16:20:08
2 Google, okay? And although that 16:17:41	2 A. I've addressed that in prior 16:20:08
3 production is still incomplete, there was 16:17:44	3 answers, so I would just include that as 16:20:10
4 some additional data that came from Google 16:17:46	4 part of this answer. And I can also point 16:20:12
5 and resulted in the supplemental opinions, 16:17:48	5 you to the analysis that's been done in 16:20:17
6 where I was actually able to go ahead and 16:17:52	6 this report and in the supplemental report 16:20:18
7 link and show how this stuff is linked. 16:17:53	7 and the supporting information that 16:20:21
8 So I just want that to be there 16:17:55	8 appears in the appendices to the report, 16:20:22
9 as a clarification on prior answers. 16:17:58	9 but I've shown how these things are 16:20:25
10 Now, prior to Mark's objection, 16:18:01	10 linked. 16:20:27
11 Mr. Mao's objection, you had a question 16:18:05	11 Q. Well, let's pull up your report, 16:20:31
12 and I would like that question read back, 16:18:07	12 please, and take the time to show me in 16:20:33
13 and I will answer it. 16:18:09	13 what passage you're stating that these 16:20:35
14 MR. ANSORGE: Court reporter, 16:18:15	14 things are linked because we've read in 16:20:39
15 could you read the question back, 16:18:17	15 your report to describe how everything 16:20:40
16 please? 16:18:18	16 could be linked. And it sounds like this 16:20:42
17 (Whereupon, the question is read 16:18:19	17 is a slightly different opinion that 16:20:44
18 back by the reporter.) 16:18:19	18 you're offering today. 16:20:46
19 A. Okay. So I think I've sort of 16:18:39	19 A. I think I've addressed this 16:20:47
20 explained that the -- that -- 16:18:42	20 already. It's just the philosophical 16:20:49
21 BY MR. ANSORGE: 16:18:42	21 difference between "are linked" and "is 16:20:51
22 Q. I'm sorry, that was actually not 16:18:46	22 linked," okay? 16:20:56
23 my question. I'll read out the question. 16:18:47	23 The data may being stored in 16:20:57
24 A. Okay. 16:18:49	24 separate places, but there's a common -- 16:20:58
25 Q. Do you opine anywhere in your 16:18:49	25 there are common keys between them and 16:20:59
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1 that, in effect, this common key forms a 16:21:02	1 the home front as well. And then if 16:22:54
2 linkage, okay? 16:21:05	2 Mr. Mao is fine with that, we'll go 16:22:55
3 Q. What is the -- 16:21:07	3 off the record. 16:22:58
4 A. Someone could take and put them 16:21:08	4 MR. MAO: All right. Go ahead. 16:23:01
5 together in the same place, or they can be 16:21:10	5 THE VIDEOGRAPHER: Going off the 16:23:03
6 left in separate places, but they're still 16:21:12	6 record. The time is 4:23 p.m. 16:23:03
7 effectively a pointer back and forth 16:21:14	7 (Whereupon, a brief recess is 16:23:13
8 between them. 16:21:16	8 taken.) 16:37:14
9 Q. Would it be fair to say that 16:21:18	9 THE VIDEOGRAPHER: Back on the 16:37:14
10 your opinion is that they are joinable? 16:21:19	10 record. The time is 4:38 p.m. 16:38:05
11 A. Yes, they're -- I've said that 16:21:24	11 BY MR. ANSORGE: 16:38:05
12 they are joinable. I believe I've talked 16:21:26	12 Q. Mr. Hochman, you had requested 16:38:10
13 about joinability. 16:21:29	13 your rebuttal report to be introduced as 16:38:12
14 In any case, I think it would be 16:21:31	14 an exhibit, and I believe we're ready to 16:38:15
15 good at this point to introduce the 16:21:33	15 load it now. We will also thereafter load 16:38:18
16 supplemental report as a exhibit because I 16:21:37	16 as an exhibit the document that you 16:38:23
17 may want to point to things in there in 16:21:40	17 referenced that Mr. Frawley sent us a few 16:38:25
18 answering some of these questions. 16:21:43	18 minutes ago. 16:38:29
19 MR. MAO: And I just note this 16:21:45	19 (Exhibit 8, Document titled 16:38:30
20 is the second time that the witness 16:21:47	20 Table of Contents, marked for 16:38:30
21 has requested that. So I will have 16:21:49	21 identification.) 16:38:30
22 that standing objection for any other 16:21:50	22 A. Perfect. 16:38:32
23 subsequent questions you raise without 16:21:52	23 MR. MAO: Were you introducing 16:38:58
24 giving him what he requested. 16:21:54	24 both? I'm only seeing an Exhibit 7. 16:38:59
25 MR. ANSORGE: All right. Let's 16:21:58	25 It appears to be the rebuttal report. 16:39:02
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1 pull up the supplemental report now. 16:22:02	1 MR. ANSORGE: I don't even see 16:39:04
2 I have a whole bunch of questions 16:22:04	2 Exhibit 7 yet. Oh, there we go. 16:39:05
3 about your opening report still, but 16:22:07	3 BY MR. ANSORGE: 16:39:05
4 you require it before you. We'll -- 16:22:10	4 Q. And Mr. Hochman, we were -- 16:39:13
5 we are going to have somebody load it, 16:22:11	5 before the break, we had -- we were 16:39:14
6 and we can pull that up for you, 16:22:12	6 discussing whether the private browsing 16:39:16
7 Mr. Hochman. 16:22:14	7 data at issue in this case was linked with 16:39:21
8 MR. MAO: Thank you. 16:22:15	8 Google account, and I believe you said you 16:39:25
9 (Exhibit 7, Jonathan Hochman's 16:22:16	9 had wanted to look at the rebuttal report 16:39:28
10 Supplemental Report, marked for 16:22:16	10 to make sure you hadn't opined on -- on 16:39:31
11 identification.) 16:22:16	11 that in any way here. 16:39:35
12 A. Since we're working across two 16:22:18	12 A. I'm not sure -- can you just 16:39:39
13 reports now, I actually have created a 16:22:20	13 read what you just said? 16:39:41
14 master index that's like a table of 16:22:22	14 Q. Why did you ask for the rebuttal 16:39:42
15 contents for both reports and all the 16:22:24	15 report to be pulled up, Mr. Hochman? 16:39:48
16 appendices. I've just sort of copied and 16:22:26	16 A. Oh, I see. Yeah, because 16:39:50
17 pasted that stuff into one place. 16:22:29	17 there's some content in there that I think 16:39:51
18 I would like to use that because 16:22:33	18 is relevant to the questions that you've 16:39:53
19 it will expedite my answering your 16:22:34	19 been asking, and I wanted to point out, 16:39:56
20 questions, and I'm willing to have the 16:22:36	20 for example, the -- the content that 16:39:58
21 lawyer send you a copy of that, as well, 16:22:38	21 begins at page 7, section 5-A. 16:40:01
22 if you -- if you don't mind me using that. 16:22:41	22 Q. And what in particular did you 16:40:19
23 MR. ANSORGE: Yeah. So let's 16:22:44	23 want to point out there? 16:40:21
24 take a break then, and he can send it 16:22:46	24 A. "Private browsing data collected 16:40:22
25 now. I need to address something on 16:22:49	25 and stored by Google can readily be linked 16:40:27
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1 you see the last sentence where it says 18:12:54	1 (Exhibit 15, Current privacy 18:15:09
2 "Usage of a cookie is in no way linked to 18:12:56	2 policy for HochmanConsultants.com, 18:15:09
3 any personally identifiable information on 18:12:59	3 marked for identification.) 18:15:10
4 our site"? 18:13:01	4 BY MR. ANSORGE: 18:15:10
5 A. Yes, that's what our belief was. 18:13:03	5 Q. Please let me know once you have 18:15:10
6 Q. And what was your understanding 18:13:10	6 it. 18:15:12
7 of personally identifiable information at 18:13:13	7 A. Yeah, I have it. 18:15:32
8 that time? 18:13:16	8 Q. Do you recognize Exhibit 15? 18:15:35
9 A. It -- it wasn't as detailed as 18:13:18	9 A. Yes. 18:15:36
10 it is now, and I think it would have just 18:13:20	10 Q. And this is the current privacy 18:15:37
11 been sort of the common business 18:13:23	11 policy for HochmanConsultants.com, 18:15:40
12 understanding of -- that it's something 18:13:26	12 correct? 18:15:43
13 that -- you know, PII has been an evolving 18:13:29	13 A. I'm not sure, but if you say it 18:15:47
14 concept. Privacy is an ascendant concern. 18:13:33	14 is, I'll take your word for it. 18:15:50
15 I've been studying it since this 18:13:38	15 Q. I represent to you that we 18:15:54
16 time, so I've learned a lot more, but this 18:13:40	16 pulled this off of the 18:15:55
17 is a reflection of what we understood, 18:13:45	17 HochmanConsultants.com website. 18:15:57
18 sort of how we understood things at the 18:13:47	18 Do you have any reason to think, 18:16:00
19 time. 18:13:50	19 looking at it, that this is not the 18:16:03
20 Q. And at the time, did you 18:13:52	20 current privacy policy? 18:16:05
21 understand a user agent to constitute 18:13:55	21 A. Yeah, this looks like the 18:16:07
22 personally identifiable information? 18:13:57	22 current privacy policy. 18:16:08
23 MR. MAO: Objection, asked and 18:14:00	23 Q. Do you see on page 2 of the PDF, 18:16:16
24 answered. 18:14:01	24 there's a bolded in the middle section 18:16:20
25 A. I don't -- yeah, I don't think 18:14:02	25 that's titled "Website Provider"? 18:16:25
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1 we got to see user agent. See, I -- I -- 18:14:03	1 Do you see that? 18:16:27
2 Google Analytics is a black box. I hadn't 18:14:07	2 A. Yes. 18:16:29
3 known at the time -- I had no insight into 18:14:11	3 Q. And the text after Website 18:16:31
4 what data was actually being logged. That 18:14:13	4 Provider, it's one of the definitions that 18:16:34
5 stuff is kind of super secret, according 18:14:16	5 your privacy policy provides, correct? 18:16:35
6 to Google. I think you guys fought us 18:14:18	6 A. Yes. 18:16:38
7 tooth and nail not to give it and, you 18:14:21	7 Q. And your website's privacy 18:16:42
8 know, there's a lot of difficulty in 18:14:24	8 policy states that "Website Provider means 18:16:45
9 getting that information. 18:14:26	9 any natural or legal person who processes 18:16:46
10 I, of course, had no access to 18:14:27	10 the data on behalf of the Company. It 18:16:50
11 any of that at the time this was written. 18:14:28	11 refers to third-party companies or 18:16:54
12 I didn't understand the extent -- the 18:14:30	12 individuals employed by the Company to 18:16:55
13 miles of data that Google was collecting 18:14:34	13 facilitate the Website, to provide the 18:16:57
14 from people. All I understood was what I 18:14:37	14 Website on behalf of the Company, to 18:17:00
15 could see in the Google Analytics 18:14:40	15 perform websites related to the Website or 18:17:03
16 dashboard that I would log in to, and I 18:14:43	16 to assist the Company in analyzing how the 18:17:05
17 didn't see any PII in there. 18:14:45	17 Website is used." 18:17:08
18 I just saw, you know, bulk, 18:14:47	18 Did I read that correctly? 18:17:09
19 anonymous data of activity on my site. I 18:14:51	19 A. Yeah, and I see there's a typo 18:17:10
20 didn't see anything in there that was tied 18:14:53	20 there. 18:17:13
21 to individual users. 18:14:56	21 Q. Google Analytics is a website 18:17:17
22 MR. ANSORGE: We'll move to 18:14:59	22 provider under this definition, correct? 18:17:18
23 strike as nonresponsive. 18:15:01	23 A. I think that you're asking me 18:17:21
24 I'll provide another exhibit and 18:15:05	24 for legal conclusions. And it -- this 18:17:23
25 this will be Exhibit 15. 18:15:06	25 document says what it says. 18:17:31
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<p>1 consider it. 19:34:07</p> <p>2 MR. ANSORGE: Well, can you let 19:34:10</p> <p>3 us know later today whether you'll 19:34:12</p> <p>4 oblige us or not, or should we expect 19:34:14</p> <p>5 to be provided with a list of all the 19:34:17</p> <p>6 sources that Mr. Hochman considered 19:34:20</p> <p>7 and relied upon in forming his 19:34:22</p> <p>8 conclusions in this case? 19:34:25</p> <p>9 MR. MAO: We've heard your 19:34:26</p> <p>10 request. We believe we complied with 19:34:27</p> <p>11 the statute, but we will consider it. 19:34:29</p> <p>12 I'd like -- I prefer less arguments 19:34:31</p> <p>13 rather than more. 19:34:33</p> <p>14 BY MR. ANSORGE: 19:34:37</p> <p>15 Q. Well, Mr. Hochman, two minutes 19:34:38</p> <p>16 remaining. 19:34:43</p> <p>17 (Reporter clarification.) 19:34:43</p> <p>18 BY MR. ANSORGE: 19:34:43</p> <p>19 Q. Okay. How is it now? 19:34:56</p> <p>20 A. The Internet gods have given you 19:34:59</p> <p>21 a reprieve. Go ahead. 19:35:01</p> <p>22 Q. Yes. Well, I wanted to thank 19:35:03</p> <p>23 you for your time today. I look forward 19:35:06</p> <p>24 to spending more time with you tomorrow. 19:35:08</p> <p>25 I appreciate your patience. 19:35:10</p> <p style="text-align: right;">Page 358</p>	<p>1 _____</p> <p>JONATHAN E. HOCHMAN</p> <p>2</p> <p>3</p> <p>4 _____</p> <p>Subscribed and sworn to</p> <p>before me this _____</p> <p>5 day of _____ 2022.</p> <p>6 _____</p> <p>Notary Public</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 360</p>
<p>1 MR. ANSORGE: For the documents 19:35:12</p> <p>2 that we have provided to -- which 19:35:13</p> <p>3 we've also produced, we can tomorrow 19:35:17</p> <p>4 or tonight provide you with the 19:35:20</p> <p>5 produced documents. I don't know if 19:35:23</p> <p>6 you'll want them tomorrow or not. 19:35:25</p> <p>7 But with that, I look forward to 19:35:27</p> <p>8 seeing you tomorrow at 10:00 a.m. 19:35:29</p> <p>9 THE WITNESS: 10:00 a.m. 19:35:33</p> <p>10 MR. MAO: Thank you. Thank you 19:35:35</p> <p>11 everyone. 19:35:36</p> <p>12 THE VIDEOGRAPHER: This 19:35:37</p> <p>13 concludes -- this concludes volume 1 19:35:37</p> <p>14 of the videotaped deposition of 19:35:46</p> <p>15 Jonathan Hochman. We are off the 19:35:48</p> <p>16 record at 7:36 p.m. 19:35:49</p> <p>17 MR. MAO: I would like a rough. 19:36:05</p> <p>18 THE COURT REPORTER: Do you want 19:36:17</p> <p>19 an expedite transcript? 19:36:19</p> <p>20 MR. MAO: Yes, please. 19:36:22</p> <p>21 (Time noted: 7:36 p.m.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 359</p>	<p>1 CERTIFICATION</p> <p>2</p> <p>3 I, BELLE VIVIENNE, a Nationally</p> <p>4 Certified Realtime Reporter, do hereby</p> <p>5 certify:</p> <p>6 That the witness whose testimony as</p> <p>7 herein set forth, was duly sworn by me;</p> <p>8 and that the within transcript is a true</p> <p>9 record of the testimony given by said</p> <p>10 witness.</p> <p>11 I further certify that I am not</p> <p>12 related to any of the parties to this</p> <p>13 action by blood or marriage, and that I am</p> <p>14 in no way interested in the outcome of</p> <p>15 this matter.</p> <p>16 IN WITNESS WHEREOF, I have hereunto</p> <p>17 set my hand this 25th day of July 2022.</p> <p>18</p> <p>19 <i>Belle Vivienne</i></p> <p>20</p> <p>21 BELLE VIVIENNE, CKR, CCR, RPR</p> <p>22</p> <p>23 * * *</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 361</p>

EXHIBIT 37

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION
CHASOM BROWN,
Plaintiff, Case No.
vs.
4:20-cv-03664-YGR-SVK
GOOGLE LLC,
Defendant.

CONFIDENTIAL
VOLUME II
CONTINUED ZOOM VIDEOTAPED DEPOSITION OF
JONATHAN HOCHMAN
July 21, 2022
10:09 a.m.

TAKEN BY:
JOSEF ANSORGE, ESQ.
ATTORNEY FOR DEFENDANT

REPORTED BY:
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<p>1 something else. I think -- Mr. Ansorge, I 10:53:12</p> <p>2 think you misspoke because you said if 10:53:15</p> <p>3 deleting logged-in stuff. I don't think 10:53:17</p> <p>4 you want to ask me about deleting 10:53:20</p> <p>5 logged-in stuff because I've never 10:53:22</p> <p>6 suggested deleting any logged-in stuff. 10:53:25</p> <p>7 BY MR. ANSORGE: 10:53:25</p> <p>8 Q. Deleting system records of all 10:53:31</p> <p>9 signed-out browsing communications would 10:53:32</p> <p>10 include deleting data Google received when 10:53:35</p> <p>11 users were not in a private browsing mode, 10:53:37</p> <p>12 correct? 10:53:40</p> <p>13 A. Okay. So, theoretically, what 10:53:42</p> <p>14 you're saying is logical, but it's also 10:53:47</p> <p>15 not what I'm suggesting because, in many 10:53:49</p> <p>16 cases, Google can prove that a record is 10:53:51</p> <p>17 not in private browsing mode because 10:53:56</p> <p>18 Google has this reliable incognito 10:53:58</p> <p>19 detection process, logic, and it's even 10:54:02</p> <p>20 recorded incognito detection bits in many 10:54:09</p> <p>21 cases. 10:54:12</p> <p>22 So if it knows that a 10:54:13</p> <p>23 transaction is not incognito, if it can 10:54:15</p> <p>24 prove that the transaction is not 10:54:19</p> <p>25 incognito or is not a private browsing, 10:54:21</p> <p style="text-align: right;">Page 406</p>	<p>1 It's not speculation for me to 10:55:31</p> <p>2 think that you may have withheld something 10:55:33</p> <p>3 from me when it's already proven that you 10:55:35</p> <p>4 did withhold stuff from me that was 10:55:37</p> <p>5 serious. And so it's not speculation. 10:55:40</p> <p>6 It's an inference. 10:55:42</p> <p>7 Now, if you take out that part 10:55:45</p> <p>8 of the question, that you take out the 10:55:47</p> <p>9 false premise, then maybe re-ask it 10:55:49</p> <p>10 without that, I'll be happy to answer. 10:55:52</p> <p>11 BY MR. ANSORGE: 10:55:52</p> <p>12 Q. I'll move to strike the -- your 10:55:55</p> <p>13 answer as nonresponsive. 10:55:58</p> <p>14 Mr. Hochman -- 10:56:03</p> <p>15 THE COURT REPORTER: Did you say 10:56:06</p> <p>16 something, Mark? I'm sorry. 10:56:07</p> <p>17 MR. MAO: I said disagree. 10:56:08</p> <p>18 There's a court order on this. There 10:56:10</p> <p>19 is a finding on this. 10:56:13</p> <p>20 BY MR. ANSORGE: 10:56:13</p> <p>21 Q. And Mr. Hochman, you're not 10:56:16</p> <p>22 opining that Google distinguishes between 10:56:17</p> <p>23 non-Chrome private browsing data and 10:56:20</p> <p>24 non-Chrome browsing data, correct? 10:56:25</p> <p>25 MR. MAO: Objection to the form 10:56:26</p> <p style="text-align: right;">Page 408</p>
<p>1 then it could retain that record. 10:54:24</p> <p>2 Q. Does your opinion 31 only relate 10:54:31</p> <p>3 to class 1, or does it also relate to 10:54:33</p> <p>4 class 2? 10:54:35</p> <p>5 A. I haven't -- I don't think that 10:54:38</p> <p>6 opinion 31 has -- is limited to class 1 or 10:54:40</p> <p>7 class 2, and I'm aware that the incognito 10:54:43</p> <p>8 detection bits only exist for a 10:54:45</p> <p>9 significant subset of class 1 in that 10:54:51</p> <p>10 they're -- I wouldn't expect to find 10:54:56</p> <p>11 incognito detection bits for class 2, but 10:54:58</p> <p>12 we still don't know what the unknowns are. 10:55:01</p> <p>13 Maybe there is something that just hasn't 10:55:03</p> <p>14 been revealed to us yet. 10:55:06</p> <p>15 Q. And apart from that speculation, 10:55:08</p> <p>16 Mr. Hochman, you're not opining that 10:55:12</p> <p>17 Google distinguishes between non-Chrome 10:55:15</p> <p>18 private browsing data and non-Chrome 10:55:19</p> <p>19 browsing data, correct? 10:55:22</p> <p>20 MR. MAO: Objection, assumes 10:55:23</p> <p>21 facts not in evidence. 10:55:26</p> <p>22 Go ahead. 10:55:27</p> <p>23 A. Okay. So I'm going to start 10:55:27</p> <p>24 with the part where you suggested that I 10:55:28</p> <p>25 was speculating. 10:55:30</p> <p style="text-align: right;">Page 407</p>	<p>1 of the question. 10:56:27</p> <p>2 Go ahead. 10:56:27</p> <p>3 A. I don't think that I've yet 10:56:31</p> <p>4 found any incognito detection bit that 10:56:33</p> <p>5 relates to non-Chrome browsing. The 10:56:37</p> <p>6 method I know that Google used for 10:56:41</p> <p>7 incognito detection was applicable to the 10:56:43</p> <p>8 Chrome browser, not -- when not on iOS. 10:56:48</p> <p>9 BY MR. ANSORGE: 10:56:55</p> <p>10 Q. Do you offer any opinion on how 10:56:57</p> <p>11 Google should distinguish between private 10:56:58</p> <p>12 browsing mode data at issue for class 2 10:57:03</p> <p>13 and signed-out non-private browsing data 10:57:04</p> <p>14 for any non-Chrome browser? 10:57:06</p> <p>15 A. I understand that you're 10:57:13</p> <p>16 commenting that this could pose some 10:57:14</p> <p>17 difficulty for Google, that they might 10:57:16</p> <p>18 have to delete a lot of data that they 10:57:19</p> <p>19 would rather not delete. 10:57:21</p> <p>20 I haven't proposed a solution 10:57:22</p> <p>21 for them, but it is a problem of their own 10:57:24</p> <p>22 making. 10:57:27</p> <p>23 Q. Move to strike as nonresponsive. 10:57:36</p> <p>24 Mr. Hochman, do you offer any 10:57:37</p> <p>25 opinion on how Google should distinguish 10:57:39</p> <p style="text-align: right;">Page 409</p>

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1 between private browsing mode data at 10:57:42	1 hours you spent reviewing documents to 10:59:58
2 issue for class 2 and signed-out 10:57:46	2 form your opinions in this case, did you 11:00:00
3 non-private browsing data from any 10:57:48	3 ever come across Google's 11:00:02
4 non-Chrome browser? 10:57:50	4 Device/App/Browser Fingerprinting and 11:00:03
5 MR. MAO: Objection to the form 10:57:53	5 Immutable Identifiers Policy? 11:00:03
6 of the question, incomplete 10:57:56	6 (Reporter clarification.) 11:00:03
7 hypothetical. 10:57:58	7 MR. ANSORGE: Immutable, 11:00:16
8 Go ahead. 10:57:58	8 I-M-M-U-T-A-B-L-E. 11:00:16
9 A. So per my prior answer, which I 10:58:00	9 MR. MAO: Objection, misstates 11:00:20
10 will further summarize, I haven't found 10:58:03	10 his prior testimony, asked and 11:00:22
11 yet a method that Google uses to 10:58:08	11 answered, incomplete hypothetical, 11:00:23
12 distinguish private browsing from 10:58:12	12 vague. 11:00:24
13 non-private browsing for the members of 10:58:15	13 Go ahead. 11:00:24
14 class 2. 10:58:19	14 A. I might have. And I'm -- I'm 11:00:26
15 BY MR. ANSORGE: 10:58:19	15 somewhat aware of such policies that are 11:00:30
16 Q. And as you sit here before us 10:58:22	16 in use by major tech companies in -- in 11:00:34
17 today, can you think of any method that 10:58:24	17 sort of the history of their evolution. 11:00:37
18 you would propose? 10:58:26	18 BY MR. ANSORGE: 11:00:37
19 A. I haven't -- I would have to see 10:58:33	19 Q. How are you aware of those 11:00:42
20 more information from Google about their 10:58:37	20 policies? 11:00:43
21 systems to address that. 10:58:39	21 A. It's something that I've 11:00:45
22 Q. Mr. Hochman, yesterday you 10:58:45	22 researched. It's something that I've seen 11:00:47
23 testified that you don't see a statement 10:58:48	23 in prior cases. I know, for example, that 11:00:49
24 in your report that asserts that Google is 10:58:51	24 Apple has phased out something called 11:00:52
25 using fingerprinting, but you're drawing 10:58:53	25 UDID, which used to be in use, but then 11:00:57
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1 inferences that this fingerprinting data 10:58:55	1 sometime in 2014, 2015, it was decided 11:01:00
2 is likely to be used or could be used by 10:58:57	2 that these immutable identifiers were a 11:01:02
3 Google for fingerprinting. 10:58:59	3 really big problem for -- for privacy. 11:01:05
4 Do you recall that? 10:59:00	4 Q. So, Mr. Hochman, as you sit here 11:01:10
5 MR. MAO: Objection, misstates 10:59:01	5 before us today, you are aware that Google 11:01:11
6 his testimony, completely misstates 10:59:02	6 has an anti-fingerprinting policy; is that 11:01:13
7 his testimony. 10:59:05	7 correct? 11:01:13
8 Go ahead. 10:59:06	8 (Reporter clarification.) 11:01:32
9 A. I think I have reasonable 10:59:07	9 MR. MAO: Objection, misstates 11:01:32
10 inferences that fingerprinting is likely 10:59:09	10 the record. 11:01:34
11 to be used. I know that fingerprinting 10:59:14	11 Go ahead. 11:01:35
12 is -- is often used to defend computer 10:59:20	12 MR. ANSORGE: Counsel, I was not 11:01:38
13 systems from things like ad fraud or 10:59:26	13 summarizing the record at all, please. 11:01:39
14 denial-of-service attacks. 10:59:29	14 Those are improper objections, 11:01:42
15 I think that fingerprinting, as 10:59:31	15 Mr. Mao. 11:01:43
16 I said, can sometimes be a legitimate 10:59:34	16 MR. MAO: You're referring to a 11:01:44
17 security technique. At other times, 10:59:38	17 Google policy that is not part of the 11:01:45
18 depending on how it's used, it can be 10:59:40	18 record. I mean, then are you saying 11:01:47
19 invasive of privacy, okay? 10:59:42	19 you didn't produce it? Okay. Sounds 11:01:49
20 So per my prior answers, what I 10:59:46	20 like it's part of the record. My 11:01:54
21 said yesterday, which I've then just 10:59:48	21 objection stands. Thank you. 11:01:56
22 summed up here, it depends how it's being 10:59:50	22 BY MR. ANSORGE: 11:01:57
23 used. 10:59:54	23 Q. Mr. Hochman, do you understand 11:01:57
24 BY MR. ANSORGE: 10:59:54	24 my question? 11:01:58
25 Q. Mr. Hochman, in the hundreds of 10:59:56	25 A. I do understand your question. 11:02:00
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<p>1 used to look in the -- the logs of -- 12:39:20</p> <p>2 containing logged-out activity and see if 12:39:25</p> <p>3 there were matching examples within some 12:39:28</p> <p>4 reasonable time frame. You know, I 12:39:31</p> <p>5 recognize that IP addresses sometimes get 12:39:34</p> <p>6 changed, but if you can find activity 12:39:36</p> <p>7 temporally close together, you can infer 12:39:40</p> <p>8 that that's the same person. So there 12:39:43</p> <p>9 would be a way for Google to verify that 12:39:45</p> <p>10 claim sometimes. 12:39:49</p> <p>11 Q. And have you done any work to 12:39:49</p> <p>12 quantify when it might be able to verify a 12:39:51</p> <p>13 claim and when it might not be able to 12:39:55</p> <p>14 verify a claim? 12:39:58</p> <p>15 A. It would be difficult for me to 12:39:58</p> <p>16 do that work with the restricted data that 12:40:00</p> <p>17 Google produced. If Google had produced 12:40:08</p> <p>18 more of the data that we requested, it 12:40:09</p> <p>19 might have been possible to do more 12:40:11</p> <p>20 analysis. 12:40:12</p> <p>21 Q. When you're saying more data, 12:40:12</p> <p>22 Mr. Hochman, do you mean non-plaintiff 12:40:14</p> <p>23 class member data or are you referring to 12:40:17</p> <p>24 something else? 12:40:19</p> <p>25 A. I'm referring essentially to all 12:40:19</p> <p style="text-align: right;">Page 470</p>	<p>1 produced to you that you would have 12:41:15</p> <p>2 benefitted from and which you could have 12:41:17</p> <p>3 used to validate your analysis? 12:41:19</p> <p>4 MR. MAO: Objection, the 12:41:22</p> <p>5 document speaks for itself. 12:41:24</p> <p>6 A. I like the way I -- I said it 12:41:25</p> <p>7 before, that what I'm looking for is all 12:41:27</p> <p>8 the data that was requested that wasn't 12:41:29</p> <p>9 produced that constrained my ability to do 12:41:31</p> <p>10 analysis. 12:41:34</p> <p>11 The -- the lack of production 12:41:35</p> <p>12 hindered me, and, you know, I can't say 12:41:37</p> <p>13 for sure what I could have done with 12:41:42</p> <p>14 unknown data that I wasn't given. 12:41:44</p> <p>15 BY MR. ANSORGE:: 12:41:44</p> <p>16 Q. Yes, Mr. Hochman. My question 12:41:49</p> <p>17 was a bit different. It relates to, do 12:41:51</p> <p>18 you believe that there's some specific 12:41:55</p> <p>19 plaintiff data that you or plaintiffs have 12:41:57</p> <p>20 requested and that they have not received, 12:42:01</p> <p>21 and that if you had received it, you would 12:42:04</p> <p>22 have been able to validate your analysis? 12:42:06</p> <p>23 MR. MAO: Objection, asked and 12:42:09</p> <p>24 answered. 12:42:10</p> <p>25 A. If I said something about it in 12:42:14</p> <p style="text-align: right;">Page 472</p>
<p>1 the data that was requested that wasn't 12:40:21</p> <p>2 produced. 12:40:24</p> <p>3 Q. Are you referring to specific 12:40:25</p> <p>4 plaintiff's data that was not produced 12:40:27</p> <p>5 that -- 12:40:30</p> <p>6 A. I think -- 12:40:31</p> <p>7 MR. MAO: Objection, asked and 12:40:31</p> <p>8 answered. 12:40:32</p> <p>9 A. Yeah. As I said, what I -- what 12:40:33</p> <p>10 I said was all the data that was asked for 12:40:39</p> <p>11 that wasn't produced, so I don't want to 12:40:41</p> <p>12 be criticized for not doing some analysis 12:40:45</p> <p>13 which I couldn't do because I wasn't given 12:40:47</p> <p>14 the data to do it. That's sort of 12:40:50</p> <p>15 Catch-22. And -- 12:40:53</p> <p>16 BY MR. ANSORGE:: 12:40:54</p> <p>17 Q. Yeah. 12:40:54</p> <p>18 A. -- and I appreciate that it may 12:40:55</p> <p>19 be painful for you to hear that 12:40:57</p> <p>20 explanation, but that's the fact of it. 12:40:59</p> <p>21 Q. Mr. Hochman, I'm just trying to 12:41:03</p> <p>22 understand the bases for your opinions in 12:41:04</p> <p>23 this case. And my question was, do you 12:41:06</p> <p>24 believe that there's some specific 12:41:10</p> <p>25 plaintiffs' data that has not been 12:41:12</p> <p style="text-align: right;">Page 471</p>	<p>1 my report, then it stands. And otherwise, 12:42:15</p> <p>2 I have to answer I don't know because if I 12:42:20</p> <p>3 haven't seen some data -- if we've 12:42:23</p> <p>4 requested some data and haven't received 12:42:25</p> <p>5 it, then I can't know the utility of data 12:42:27</p> <p>6 without actually seeing it. 12:42:30</p> <p>7 Maybe there's some extra fields 12:42:32</p> <p>8 that we still haven't been given that 12:42:33</p> <p>9 would be very informative, and I don't 12:42:37</p> <p>10 know what to expect within the unknowns. 12:42:39</p> <p>11 These are literally unknown unknowns. 12:42:41</p> <p>12 BY MR. ANSORGE:: 12:42:41</p> <p>13 Q. And as you sit here before us, 12:42:46</p> <p>14 you're not aware of any particular 12:42:48</p> <p>15 plaintiffs' data that you've requested and 12:42:50</p> <p>16 have not received; is that correct? 12:42:52</p> <p>17 MR. MAO: Objection, asked and 12:42:55</p> <p>18 answered, misstates his testimony. 12:42:56</p> <p>19 A. I -- I don't have some specific 12:43:01</p> <p>20 data in mind, but I wouldn't expect that I 12:43:03</p> <p>21 would because I don't know what the 12:43:06</p> <p>22 unknown unknowns are. 12:43:08</p> <p>23 BY MR. ANSORGE:: 12:43:08</p> <p>24 Q. Mr. Hochman, do you agree that 12:43:12</p> <p>25 people living in the same household may 12:43:13</p> <p style="text-align: right;">Page 473</p>

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<p>1 share computers, phones, and other 12:43:16</p> <p>2 connected devices? 12:43:18</p> <p>3 A. This is a perennial issue for 12:43:21</p> <p>4 online businesses. This is something that 12:43:25</p> <p>5 is dealt with all the time. I would point 12:43:27</p> <p>6 you to my prior answers that talk about 12:43:31</p> <p>7 this. 12:43:32</p> <p>8 I would also point you to my 12:43:33</p> <p>9 additional statement that Google in its 12:43:34</p> <p>10 fingerprinting policy considers, you know, 12:43:38</p> <p>11 less than a thousand; if there are less 12:43:41</p> <p>12 than a thousand users identified by some 12:43:44</p> <p>13 data, then that's considered to be unique 12:43:47</p> <p>14 data. 12:43:50</p> <p>15 So that's -- you know, Google's 12:43:51</p> <p>16 threshold in that policy is a thousand, 12:43:54</p> <p>17 and I don't know many households that have 12:43:55</p> <p>18 a thousand people in them. 12:43:57</p> <p>19 Q. You don't think that might be a 12:44:00</p> <p>20 policy that -- to prevent identification? 12:44:02</p> <p>21 Do you believe that as a statement of 12:44:04</p> <p>22 fact, that if a thousand people share an 12:44:06</p> <p>23 identifier, they're identified? 12:44:08</p> <p>24 A. I think -- 12:44:12</p> <p>25 MR. MAO: I'm sorry, objection 12:44:13</p> <p style="text-align: right;">Page 474</p>	<p>1 It's a losing issue that you're 12:45:16</p> <p>2 trying to argue. I would encourage you to 12:45:17</p> <p>3 just drop it because it's really 12:45:20</p> <p>4 frivolous. 12:45:22</p> <p>5 BY MR. ANSORGE:: 12:45:22</p> <p>6 Q. Mr. Hochman, in your report, do 12:45:24</p> <p>7 you cite any studies that analyze the 12:45:26</p> <p>8 frequency of device sharing? 12:45:27</p> <p>9 A. I'm not aware of any that I have 12:45:32</p> <p>10 cited. 12:45:34</p> <p>11 Q. And in your report, you do not 12:45:36</p> <p>12 discuss device sharing at all; isn't that 12:45:38</p> <p>13 correct? 12:45:41</p> <p>14 MR. MAO: Objection, misstates 12:45:42</p> <p>15 his testimony. The document speaks 12:45:43</p> <p>16 for itself. 12:45:46</p> <p>17 A. Yeah, whatever I said in my 12:45:47</p> <p>18 report stands. 12:45:48</p> <p>19 And I would just further add 12:45:50</p> <p>20 that I'm aware, and have always been 12:45:52</p> <p>21 aware, of the issue and the potential for 12:45:54</p> <p>22 device sharing. Same as Google is. And 12:45:56</p> <p>23 Google still gets over it when they do 12:45:59</p> <p>24 their, you know, allow log-ins, when they 12:46:02</p> <p>25 allow conversion tracking. 12:46:05</p> <p style="text-align: right;">Page 476</p>
<p>1 to the form of the question, asked and 12:44:14</p> <p>2 answered. 12:44:14</p> <p>3 A. I think it highlights the danger 12:44:15</p> <p>4 of -- of what we might call an 12:44:18</p> <p>5 identification of -- of a group. Google 12:44:24</p> <p>6 is considering under a thousand to be some 12:44:27</p> <p>7 sort of small group. 12:44:29</p> <p>8 Once you narrow things down that 12:44:30</p> <p>9 much, in any sort of case where somebody 12:44:32</p> <p>10 is trying to identify a user, and I've 12:44:38</p> <p>11 said this before in prior answers, there's 12:44:40</p> <p>12 always some additional information 12:44:44</p> <p>13 available. 12:44:46</p> <p>14 There are always some 12:44:47</p> <p>15 circumstances around that, some other 12:44:47</p> <p>16 things that are known, and those can be 12:44:49</p> <p>17 used in a process of elimination to 12:44:52</p> <p>18 whittle down any small group down to 12:44:55</p> <p>19 identify the individual. 12:44:57</p> <p>20 And I know that Dave Nelson will 12:44:58</p> <p>21 come forward and offer to testify that the 12:45:01</p> <p>22 FBI does that all the time, that they're 12:45:04</p> <p>23 not hindered by this scenario of multiple 12:45:08</p> <p>24 people in a household. It's a red herring 12:45:11</p> <p>25 issue. 12:45:15</p> <p style="text-align: right;">Page 475</p>	<p>1 You know, Google, when someone 12:46:09</p> <p>2 logs in to your account, how do they know 12:46:11</p> <p>3 it's actually you and not someone else? 12:46:15</p> <p>4 They don't -- they don't worry about it 12:46:17</p> <p>5 too much. It's just -- there's so much 12:46:20</p> <p>6 that you can do. And, you know, that's 12:46:21</p> <p>7 the state of online identification. 12:46:24</p> <p>8 BY MR. ANSORGE:: 12:46:31</p> <p>9 Q. Mr. Hochman, can you point to 12:46:31</p> <p>10 any paragraphs in your report in which you 12:46:32</p> <p>11 discuss device sharing? 12:46:34</p> <p>12 A. I'm not sure that I've discussed 12:46:38</p> <p>13 device sharing, but I've talked about this 12:46:40</p> <p>14 before and given you a bunch of answers on 12:46:42</p> <p>15 this question. So I will reiterate by 12:46:44</p> <p>16 reference all those answers, and further 12:46:47</p> <p>17 add that the -- I'm aware of the potential 12:46:50</p> <p>18 for device sharing. And this is nothing 12:46:53</p> <p>19 surprising or new or that alters any of my 12:46:55</p> <p>20 opinions. 12:46:59</p> <p>21 Q. And, Mr. Hochman, two users who 12:47:01</p> <p>22 share a single device that uses the same 12:47:03</p> <p>23 Wi-Fi connection will have the same IP 12:47:08</p> <p>24 address; is that correct? 12:47:10</p> <p>25 MR. MAO: Objection, incomplete 12:47:11</p> <p style="text-align: right;">Page 477</p>

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<p>1 question is, both possibilities. One 12:55:47</p> <p>2 possibility is that Google could have come 12:55:50</p> <p>3 forward and just offered this argument in 12:55:53</p> <p>4 their defense if they wanted to, but they 12:55:55</p> <p>5 didn't. And you had three experts rebut 12:55:58</p> <p>6 me. I'm one guy and you had to get three 12:56:01</p> <p>7 people to rebut me. That's not really a 12:56:04</p> <p>8 fair fight. 12:56:06</p> <p>9 But beyond that, we've requested 12:56:06</p> <p>10 evidence, which if it -- that request had 12:56:08</p> <p>11 been fulfilled, we might have been able to 12:56:12</p> <p>12 do this analysis ourselves. So it's -- 12:56:14</p> <p>13 kind of the answer is both. 12:56:16</p> <p>14 BY MR. ANSORGE:: 12:56:17</p> <p>15 Q. Let's go back to the scenario of 12:56:18</p> <p>16 the five different users. They're on the 12:56:19</p> <p>17 same device with the same browser on the 12:56:21</p> <p>18 same Wi-Fi network. 12:56:24</p> <p>19 Would they have the same user 12:56:25</p> <p>20 agent? 12:56:30</p> <p>21 A. If they're using the same piece 12:56:30</p> <p>22 of software, then they would have the same 12:56:32</p> <p>23 user agent, but I must reiterate that five 12:56:35</p> <p>24 users on one device is extremely unlikely. 12:56:41</p> <p>25 It's an edge case, and there's no evidence 12:56:45</p> <p style="text-align: right;">Page 486</p>	<p>1 version is often included in the user 12:57:52</p> <p>2 agent string, so every time you update 12:57:54</p> <p>3 your browser and get a new version, 12:57:56</p> <p>4 potentially the user agent string could 12:57:58</p> <p>5 change. 12:58:01</p> <p>6 But I would say that that 12:58:01</p> <p>7 progression is predictable. It occurs 12:58:03</p> <p>8 around known dates and someone who is 12:58:07</p> <p>9 trying to match things up could account 12:58:10</p> <p>10 for that with logic. 12:58:13</p> <p>11 Q. As you sit here before us today, 12:58:17</p> <p>12 do you have a rough understanding of how 12:58:19</p> <p>13 often Chrome updates to a new version? 12:58:21</p> <p>14 A. My sensation is that it might 12:58:25</p> <p>15 update once or twice a month. 12:58:27</p> <p>16 Q. Would you consider the scenario, 12:58:29</p> <p>17 Mr. Hochman, where you have two users. 12:58:39</p> <p>18 They're sharing a single device, but only 12:58:41</p> <p>19 one has ever used private browsing mode on 12:58:44</p> <p>20 that shared device. 12:58:46</p> <p>21 In your report, you don't 12:58:49</p> <p>22 propose a method for identifying what 12:58:50</p> <p>23 specific user was using private browsing 12:58:52</p> <p>24 mode; isn't that correct? 12:58:54</p> <p>25 MR. MAO: Objection, misstates 12:58:56</p> <p style="text-align: right;">Page 488</p>
<p>1 that it's happened with any material 12:56:48</p> <p>2 frequency. 12:56:50</p> <p>3 Q. Are you aware of user agents 12:56:50</p> <p>4 changing over time similar to how IP 12:56:54</p> <p>5 addresses may change over time? 12:56:56</p> <p>6 A. Yes. 12:56:57</p> <p>7 Q. Have you accounted for that in 12:56:58</p> <p>8 your opinions in this report at all? 12:57:04</p> <p>9 A. I have considered it, and I 12:57:06</p> <p>10 am -- I am aware of it. It's certainly 12:57:09</p> <p>11 something that I have kept in mind. And 12:57:14</p> <p>12 you telling me that user agent strings 12:57:17</p> <p>13 change over time doesn't alter any of my 12:57:20</p> <p>14 opinions. 12:57:23</p> <p>15 Q. Separate from me telling you 12:57:24</p> <p>16 anything, Mr. Hochman, are you aware of 12:57:29</p> <p>17 user agent strings changing over time? 12:57:31</p> <p>18 A. Yes. 12:57:33</p> <p>19 Q. And can you tell us something 12:57:36</p> <p>20 else about that? How frequently do user 12:57:37</p> <p>21 agent strings change over time in your 12:57:42</p> <p>22 opinion? 12:57:44</p> <p>23 A. My understanding is that if the 12:57:44</p> <p>24 user updates their browser software to a 12:57:47</p> <p>25 new version because that browser software 12:57:50</p> <p style="text-align: right;">Page 487</p>	<p>1 the document, incomplete hypothetical, 12:58:57</p> <p>2 argumentative, asked and answered. 12:59:00</p> <p>3 Go ahead. 12:59:02</p> <p>4 A. Yeah, so as -- anything I've 12:59:04</p> <p>5 said previously on this issue, I -- I 12:59:06</p> <p>6 continue to hold that, and I'm not 12:59:10</p> <p>7 altering that prior testimony and include 12:59:17</p> <p>8 that here. 12:59:19</p> <p>9 But further, I've considered 12:59:20</p> <p>10 this possibility, and if there are two 12:59:22</p> <p>11 people sharing the device like that 12:59:25</p> <p>12 frequently, it would seem that they're 12:59:27</p> <p>13 part of the same household. They know 12:59:31</p> <p>14 each other. And I have proposed a 12:59:34</p> <p>15 solution because part of what I've 12:59:37</p> <p>16 suggested is that users can self-identify. 12:59:40</p> <p>17 So if one of the users or the 12:59:43</p> <p>18 other user self-identifies, Google could 12:59:46</p> <p>19 then verify that, yeah, they were doing 12:59:49</p> <p>20 some private browsing. I don't see how 12:59:52</p> <p>21 that really changes things in a 12:59:55</p> <p>22 significant way. 12:59:58</p> <p>23 BY MR. ANSORGE:: 13:00:01</p> <p>24 Q. But in the scenario we're just 13:00:01</p> <p>25 discussing, Mr. Hochman, where there's two 13:00:04</p> <p style="text-align: right;">Page 489</p>

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<p>1 users, shared device, same browser, Wi-Fi, 13:00:07</p> <p>2 household, you're saying that Google could 13:00:14</p> <p>3 verify which one of those users was in 13:00:17</p> <p>4 private browsing mode; is that correct? 13:00:22</p> <p>5 A. No. What I would say is that 13:00:25</p> <p>6 this isn't going to happen often enough to 13:00:27</p> <p>7 cause a material problem because the same 13:00:29</p> <p>8 problem you're highlighting here for -- 13:00:32</p> <p>9 and maybe "problem" is the wrong word. 13:00:35</p> <p>10 The same thing that you're 13:00:37</p> <p>11 highlighting here also would occur with 13:00:38</p> <p>12 conversion tracking, right? Google 13:00:43</p> <p>13 reports to an advertiser, hey, this ad 13:00:44</p> <p>14 rendered a conversion, but how does Google 13:00:46</p> <p>15 know that it wasn't me who looked at the 13:00:49</p> <p>16 ad and said, no, I don't want to buy that, 13:00:52</p> <p>17 and then my wife, from the same device, 13:00:54</p> <p>18 later on came along and bought that thing 13:00:56</p> <p>19 without ever having talked to me? Google 13:00:58</p> <p>20 is now going to tell that advertiser, hey, 13:01:00</p> <p>21 this ad caused this sale for you, but 13:01:02</p> <p>22 actually it didn't. 13:01:06</p> <p>23 So that kind of slippage is part 13:01:07</p> <p>24 and parcel of things online, and Google 13:01:10</p> <p>25 accepts it and lives with it very happily 13:01:12</p> <p style="text-align: right;">Page 490</p>	<p>1 material that's going to alter the outcome 13:02:17</p> <p>2 so much that it's going to be unfair. 13:02:20</p> <p>3 Q. Mr. Hochman, would you agree 13:02:25</p> <p>4 that individuals might share social media, 13:02:26</p> <p>5 e-mail accounts and even if they have 13:02:32</p> <p>6 separate accounts, they may sometimes know 13:02:33</p> <p>7 each other's passwords; would you agree 13:02:35</p> <p>8 with that? 13:02:39</p> <p>9 A. It's possible. I mean, I -- I 13:02:39</p> <p>10 think that that's something that I've 13:02:42</p> <p>11 considered, yes. 13:02:45</p> <p>12 Q. And how has that impacted the 13:02:47</p> <p>13 opinions that you're proffering in this 13:02:51</p> <p>14 case? 13:02:52</p> <p>15 A. I think that the way to address 13:02:54</p> <p>16 this -- and I think some of your experts 13:02:57</p> <p>17 have pointed out the danger of abusive 13:02:59</p> <p>18 spouses or parents or children, and if you 13:03:08</p> <p>19 mail some notice to someone and saying 13:03:09</p> <p>20 Hey, we saw that you are in incognito 13:03:12</p> <p>21 mode, and there's this class action, that 13:03:12</p> <p>22 that could have consequences. 13:03:14</p> <p>23 So the way to mitigate that is 13:03:15</p> <p>24 to mail a neutral notice to every Google 13:03:16</p> <p>25 account holder so that you don't give away 13:03:20</p> <p style="text-align: right;">Page 492</p>
<p>1 in their business endeavors. And it seems 13:01:16</p> <p>2 rather strange that they would suddenly 13:01:19</p> <p>3 say, whoa, this is a big problem here when 13:01:21</p> <p>4 they're perfectly happy to go charge 13:01:27</p> <p>5 advertisers billions and billions of 13:01:28</p> <p>6 dollars based on this level -- this -- 13:01:31</p> <p>7 sort of the accuracy of tracking where 13:01:34</p> <p>8 that may also happen. 13:01:35</p> <p>9 Q. Is it fair to say that 13:01:37</p> <p>10 conversion tracking doesn't always 13:01:38</p> <p>11 identify the individual precisely? 13:01:41</p> <p>12 A. I think I've said this in many 13:01:44</p> <p>13 prior answers, that online, you generally 13:01:47</p> <p>14 don't have access to the -- to the camera 13:01:50</p> <p>15 on the computer to be able to look and ID 13:01:53</p> <p>16 the person who's sitting at the keyboard. 13:01:55</p> <p>17 That's -- that would be creepy if that 13:01:57</p> <p>18 existed for this kind of application. So 13:01:59</p> <p>19 you have to tolerate a certain amount 13:02:02</p> <p>20 of -- of -- a certain level of 13:02:05</p> <p>21 imprecision. There's always a bit of 13:02:08</p> <p>22 error rate. 13:02:10</p> <p>23 But I don't -- I haven't seen 13:02:11</p> <p>24 any statistics to say that this is not an 13:02:12</p> <p>25 edge case, to say that this is, you know, 13:02:15</p> <p style="text-align: right;">Page 491</p>	<p>1 any information. You just say, hey, this 13:03:22</p> <p>2 is class action. It affects Google 13:03:24</p> <p>3 accounts. If you were an incognito user, 13:03:26</p> <p>4 you can go here to fill a claim. I think 13:03:29</p> <p>5 you can get across that bridge with a 13:03:31</p> <p>6 little bit of thinking without putting 13:03:33</p> <p>7 anyone at risk. 13:03:35</p> <p>8 And I'm sensitive to that issue. 13:03:36</p> <p>9 I don't want to put anyone at risk. I 13:03:37</p> <p>10 agree that we don't put anyone at risk. 13:03:40</p> <p>11 Q. Can you explain a little bit 13:03:44</p> <p>12 more when you're saying -- I want to make 13:03:46</p> <p>13 sure I understand this. Your opinion, 13:03:50</p> <p>14 Mr. Hochman, is that an e-mail should be 13:03:51</p> <p>15 sent in a neutral note to every Google 13:03:54</p> <p>16 account holder to describe the case 13:03:58</p> <p>17 overall and then ask them to 13:04:04</p> <p>18 self-identify; is that correct? 13:04:06</p> <p>19 A. Actually -- 13:04:08</p> <p>20 MR. MAO: Sorry, sorry. 13:04:11</p> <p>21 Objection. Are you referring to a 13:04:12</p> <p>22 specific document, or are you just 13:04:13</p> <p>23 asking the question generally, sitting 13:04:14</p> <p>24 here? 13:04:16</p> <p>25 MR. ANSORGE: I was referring to 13:04:17</p> <p style="text-align: right;">Page 493</p>

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<p>1 4:16 p.m. Thank you. 16:16:51</p> <p>2 MR. MAO: Can I get an expedited 16:16:55</p> <p>3 copy? 16:16:57</p> <p>4 THE COURT REPORTER: And a 16:17:06</p> <p>5 rough? 16:17:06</p> <p>6 MR. MAO: Yes, please. 16:17:06</p> <p>7 (Time noted: 4:16 p.m.)</p> <p>8</p> <p>9 _____</p> <p>10 JONATHAN HOCHMAN</p> <p>11</p> <p>12 _____</p> <p>12 Subscribed and sworn to</p> <p>13 before me this _____</p> <p>13 day of _____ 2022.</p> <p>14 _____</p> <p>15 Notary Public</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 614</p>	<p>1 JONATHAN HOCHMAN</p> <p>2 jonathan@hochmanconsultants.com</p> <p>3 July 26, 2022</p> <p>4 RE: BROWN VS. GOOGLE LLC</p> <p>5 JULY 21, 2022, JONATHAN HOCHMAN, VOLUME II, JOB NO. 5312353</p> <p>6 The above-referenced transcript has been</p> <p>7 completed by Veritext Legal Solutions and</p> <p>8 review of the transcript is being handled as follows:</p> <p>9 ___ Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext</p> <p>10 to schedule a time to review the original transcript at</p> <p>11 a Veritext office.</p> <p>12 ___ Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF</p> <p>13 Transcript - The witness should review the transcript and</p> <p>14 make any necessary corrections on the errata pages included</p> <p>15 below, notating the page and line number of the corrections.</p> <p>16 The witness should then sign and date the errata and penalty</p> <p>17 of perjury pages and return the completed pages to all</p> <p>18 appearing counsel within the period of time determined at</p> <p>19 the deposition or provided by the Code of Civil Procedure.</p> <p>20 ___ Waiving the CA Code of Civil Procedure per Stipulation of</p> <p>21 Counsel - Original transcript to be released for signature</p> <p>22 as determined at the deposition.</p> <p>23 ___ Signature Waived – Reading & Signature was waived at the</p> <p>24 time of the deposition.</p> <p>25</p> <p style="text-align: right;">Page 616</p>
<p>1 CERTIFICATION</p> <p>2</p> <p>3 I, BELLE VIVIENNE, a Nationally</p> <p>4 Certified Realtime Reporter, do hereby</p> <p>5 certify:</p> <p>6 That the witness whose testimony as</p> <p>7 herein set forth, was duly sworn by me;</p> <p>8 and that the within transcript is a true</p> <p>9 record of the testimony given by said</p> <p>10 witness.</p> <p>11 I further certify that I am not</p> <p>12 related to any of the parties to this</p> <p>13 action by blood or marriage, and that I am</p> <p>14 in no way interested in the outcome of</p> <p>15 this matter.</p> <p>16 IN WITNESS WHEREOF, I have hereunto</p> <p>17 set my hand this 26th day of July 2022.</p> <p>18</p> <p>19 <i>Belle Vivienne</i></p> <p>20 BELLE VIVIENNE, CKR, CCR, RPR</p> <p>21</p> <p>22 * * *</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 615</p>	<p>1 ___X_Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF</p> <p>2 Transcript - The witness should review the transcript and</p> <p>3 make any necessary corrections on the errata pages included</p> <p>4 below, notating the page and line number of the corrections.</p> <p>5 The witness should then sign and date the errata and penalty</p> <p>6 of perjury pages and return the completed pages to all</p> <p>7 appearing counsel within the period of time determined at</p> <p>8 the deposition or provided by the Federal Rules.</p> <p>9 ___ Federal R&S Not Requested - Reading & Signature was not</p> <p>10 requested before the completion of the deposition.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 617</p>

EXHIBIT 38

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE
TRUJILLO, individually and on
behalf of all other similarly
situated,

Plaintiffs,

No.

vs.

4:20-cv-03664-YGR-SVK

GOOGLE LLC,

Defendant.

_____ /

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CORRECTED VIDEOTAPED DEPOSITION OF MICHAEL LASINSKI
Remote Zoom Proceedings
Ann Arbor, Michigan
Wednesday, July 20, 2022

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

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Job No. 5308350

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<p>1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION 3 4 5 CHASOM BROWN, WILLIAM BYATT, JEREMY DAVIS, CHRISTOPHER 6 CASTILLO, and MONIQUE TRUJILLO, individually and on 7 behalf of all other similarly situated, 8 Plaintiffs, 9 No. vs. 4:20-cv-03664-YGR-SVK 10 GOOGLE LLC, 11 Defendant. 12 _____/ 13 14 -- CONFIDENTIAL -- 15 Videotaped deposition of MICHAEL LASINSKI, 16 taken on behalf of Defendant, Remote Zoom Proceedings 17 from Cambridge, Massachusetts, beginning at 10:59 a.m. 18 Eastern Daylight Time and ending at 8:28 p.m. Eastern 19 Daylight Time, on Wednesday, July 20, 2022, before 20 Leslie Rockwood Rosas, RPR, Certified Shorthand Reporter 21 No. 3462. 22 23 24 25</p> <p style="text-align: right;">Page 2</p>	<p>1 APPEARANCES (Continued): 2 3 FOR THE DEFENDANT: 4 QUINN EMANUEL URQUHART & SULLIVAN, LLP 5 BY: VIOLA TREBICKA, ESQ. 6 865 South Figueroa Street, 10th Floor 7 Los Angeles, California 90017 8 (213) 443-3000 9 violatrebicka@quinnemanuel.com 10 -and- 11 BY: TEUTA FANI, ESQ. 12 191 N. Wacker Drive, Suite 2700 13 Chicago, Illinois 60606 14 (312) 705-7400 15 teutafani@quinnemanuel.com 16 17 Also Present: 18 Amna Qamer, Boies Schiller Flexner LLP, summer 19 associate 20 Angela Peterson, Quinn Emanuel Urquhart & Sullivan, 21 LLP, summer associate 22 Denisha Bacchus, Google LLC 23 Christina Bartlett, Analysis Group 24 Robert Fenton, Videographer 25</p> <p style="text-align: right;">Page 4</p>
<p>1 APPEARANCES: 2 3 FOR THE PLAINTIFFS: 4 BOIES SCHILLER FLEXNER LLP 5 BY: JAMES LEE, ESQ. 6 100 SE Second Street, Suite 2800 7 Miami, Florida 33131 8 (305) 539-8400 9 jlee@bsflp.com 10 11 MORGAN & MORGAN 12 BY: JOHN A. YANCHUNIS, ESQ. 13 201 North Franklin Street, 7th Floor 14 Tampa, Florida 33602 15 (813) 223-5505 16 jyanchuis@forthepeople.com 17 18 DICELLO LEVITT GUTZLER 19 BY: SHARON CRUZ, ESQ. 20 Ten North Dearborn Street, Sixth Floor 21 Chicago, Illinois 60602 22 (312) 214-7900 23 szruz@dicellolevitt.com 24 25</p> <p style="text-align: right;">Page 3</p>	<p>1 INDEX 2 3 4 WEDNESDAY, JULY 20, 2022 5 6 WITNESS EXAMINATION 7 MICHAEL LASINSKI 8 9 BY MS. TREBICKA 10, 219 10 BY MR. LEE 211 11 12 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER: 13 (NONE) 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 5</p>

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<p>1 A. Right. I just want to make sure that I don't --</p> <p>2 I could answer a question incorrectly because I could</p> <p>3 assume that it's Incognito mode or private browsing mode,</p> <p>4 and it's not.</p> <p>5 Q. I think you can safely -- I don't want to say 12:10:10</p> <p>6 assume, because obviously you need to listen to my</p> <p>7 question very carefully. But most of our conversation</p> <p>8 will involve private browsing modes. I will make it</p> <p>9 clear in my question whether it's private browsing</p> <p>10 or regular browsing. And I will make it extra clear if 12:10:24</p> <p>11 I'm talking about all browsing, including regular</p> <p>12 browsing.</p> <p>13 A. Okay. Okay.</p> <p>14 Q. But my question, it was actually a specific</p> <p>15 limitation in the question, where I said that this -- the 12:10:35</p> <p>16 hypothetical scenario involved a private browsing mode</p> <p>17 user.</p> <p>18 A. Okay. Could you repeat the question, though,</p> <p>19 because I -- I was starting to answer, and then I</p> <p>20 couldn't remember if you asked that question or not -- or 12:10:51</p> <p>21 made that qualifier or not.</p> <p>22 Q. That's fine.</p> <p>23 So user is in private browsing mode, not signed</p> <p>24 into her Google account during the class period, does a</p> <p>25 search on Google.com, is shown an ad and clicks on that 12:11:03</p> <p style="text-align: right;">Page 42</p>	<p>1 in your unjust enrichment damages model? But it's the</p> <p>2 same hypothetical.</p> <p>3 MR. LEE: Asked and answered.</p> <p>4 THE WITNESS: So if I'm -- if I'm understanding</p> <p>5 the hypothetical correctly, they go -- just so -- just to 12:13:45</p> <p>6 restate it, they go to private browsing mode, they go to</p> <p>7 a website, and then that website -- and then that</p> <p>8 website, they're displayed an ad, and then they go to</p> <p>9 another website where that ad was displayed.</p> <p>10 Q. BY MS. TREBICKA: Correct. 12:14:06</p> <p>11 A. I think that it could be. But the reality is I</p> <p>12 take a lot of cuts. And so -- in my -- in my analysis.</p> <p>13 So, I mean, if it's something that they click on and</p> <p>14 they -- like a mobile ad, that would not be included,</p> <p>15 because I've cut that out of my analysis. Any app 12:14:44</p> <p>16 traffic I've cut out of my analysis.</p> <p>17 So it really would depend on how that -- how</p> <p>18 that actually all transpired.</p> <p>19 Q. That's fair, Mr. Lasinski. And we'll be talking</p> <p>20 in a lot more detail about the unjust enrichment damages 12:15:00</p> <p>21 model.</p> <p>22 Now, what is the injury for which you're</p> <p>23 quantifying damages?</p> <p>24 MR. LEE: Vague, beyond the scope.</p> <p>25 THE WITNESS: I think you're asking for a legal 12:15:27</p> <p style="text-align: right;">Page 44</p>
<p>1 ad.</p> <p>2 So my question is: Would that activity be</p> <p>3 something that you are quantifying in your restitution</p> <p>4 damages opinion?</p> <p>5 MR. LEE: Incomplete hypothetical. 12:11:20</p> <p>6 Go ahead and answer.</p> <p>7 THE WITNESS: Well, I mean, again, I just want</p> <p>8 to make clear what I'm doing in my restitution damages.</p> <p>9 And that is looking at the number of unique monthly</p> <p>10 browser instances. 12:11:44</p> <p>11 So if that results in an instance, as collected</p> <p>12 by a browser -- a browser, if that results in an</p> <p>13 instance, yes, that could be included -- that would be</p> <p>14 included. But all the rest of their browsing that they</p> <p>15 did that month also would be included in Incognito mode. 12:12:14</p> <p>16 Because I'm only -- I'm only calculating one instance per</p> <p>17 month.</p> <p>18 So even if there were 24 instances and even if</p> <p>19 they clicked on 37 websites in unique browsing mode, that</p> <p>20 only counts as one instance. 12:12:37</p> <p>21 Q. BY MS. TREBICKA: And the same hypothetical --</p> <p>22 do you need me to repeat it?</p> <p>23 A. I guess so, because I thought I just answered</p> <p>24 the question.</p> <p>25 Q. No, now the question is: Would it be included 12:12:53</p> <p style="text-align: right;">Page 43</p>	<p>1 conclusion there.</p> <p>2 Q. BY MS. TREBICKA: You don't have any other</p> <p>3 answer, other than one that you believe is a legal</p> <p>4 conclusion?</p> <p>5 A. I do believe that it's a legal conclusion. So 12:15:36</p> <p>6 from an injury standpoint, my understanding is that</p> <p>7 Google was unjustly enriched in this case, as well as</p> <p>8 the -- the private browsing users were wrongfully -- had</p> <p>9 their data wrongfully taken.</p> <p>10 Q. Is one of your assumptions that every user who 12:16:08</p> <p>11 falls within the class definitions was actually harmed by</p> <p>12 the alleged misconduct?</p> <p>13 A. Yes, every user was harmed.</p> <p>14 Q. Now, you understand that there's some</p> <p>15 variability in what users believe or are aware of about 12:16:48</p> <p>16 what they let Google collect?</p> <p>17 MR. LEE: Objection. Compound.</p> <p>18 THE WITNESS: I don't -- I don't believe that</p> <p>19 anyone is fully aware of what Google collects.</p> <p>20 Q. BY MS. TREBICKA: Do you understand that there's 12:17:10</p> <p>21 at least variability in what people are aware of, as far</p> <p>22 as what Google collects?</p> <p>23 A. When you're talking about the class, I don't</p> <p>24 think that they -- they -- I don't think that users would</p> <p>25 understand what Google collects. I don't think class 12:17:33</p> <p style="text-align: right;">Page 45</p>

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<p>1 users would understand what they collect or -- or are</p> <p>2 aware of what they collect.</p> <p>3 Q. So your opinion is that no user is aware of what</p> <p>4 Google collects when a user is in private browsing mode?</p> <p>5 A. I don't think that they could be aware of what 12:17:56</p> <p>6 Google collects. I don't think Google -- I mean, I read</p> <p>7 the testimony of Ms. Borsay. She doesn't even know what</p> <p>8 Google collects, and she's a key person in their private</p> <p>9 browsing mode group.</p> <p>10 So users -- it would -- in my opinion, would be 12:18:16</p> <p>11 beyond reasonable to assume that they're aware of what</p> <p>12 Google is collecting.</p> <p>13 Q. So your assumption is that every single user in</p> <p>14 the class has the same level of awareness of what Google</p> <p>15 collects when they are browsing in private browsing mode? 12:18:34</p> <p>16 MR. LEE: Objection. Mischaracterizes his prior</p> <p>17 testimony.</p> <p>18 THE WITNESS: I don't think I have to have an assumption</p> <p>19 that they -- I don't have to have an assumption what</p> <p>20 level of awareness they -- they have. I just know that 12:18:48</p> <p>21 they're not aware. And they can't -- they can't be</p> <p>22 aware.</p> <p>23 I'm not aware of any place, or I've -- and I've</p> <p>24 searched the data to see if there's anywhere that Google,</p> <p>25 like, publicly states: Here's all the information that 12:19:06</p> <p style="text-align: right;">Page 46</p>	<p>1 example, that Google knows their location when they are</p> <p>2 in an Incognito mode session?</p> <p>3 A. I -- I don't have an opinion on what specific</p> <p>4 users know or don't know.</p> <p>5 Again, I'm not -- I haven't done a study of what 12:22:07</p> <p>6 users would say that they know. I mean, I think, again,</p> <p>7 it would be hard to know something, because people aren't</p> <p>8 aware of everything that Google is collecting. They</p> <p>9 can't be aware of it because it's not published.</p> <p>10 Q. Are you drawing a difference between the word 12:22:32</p> <p>11 "aware" and "know"?</p> <p>12 A. I'm -- in that case, I don't think I was trying</p> <p>13 to draw a difference between them.</p> <p>14 Q. So do you believe that Google -- that users are</p> <p>15 aware that within an Incognito mode session, Google 12:22:55</p> <p>16 learns things about the user to personalize their</p> <p>17 experience when using Google products?</p> <p>18 MR. LEE: Calls for speculation, beyond the</p> <p>19 scope.</p> <p>20 THE WITNESS: Could you repeat that question? 12:23:59</p> <p>21 Q. BY MS. TREBICKA: Do you believe that Google</p> <p>22 users are aware that within Incognito mode session,</p> <p>23 Google is aware -- I apologize. Let me start again.</p> <p>24 Do you believe that Google users are aware that</p> <p>25 within their Incognito mode session, Google knows 12:24:19</p> <p style="text-align: right;">Page 48</p>
<p>1 we collect on you when you're in private browsing mode.</p> <p>2 I'm not aware of anything like that.</p> <p>3 So I've talked to Mr. Hochman. He's not aware</p> <p>4 before this case what Google collects. And probably is</p> <p>5 still not aware of everything that they collect. 12:19:31</p> <p>6 Ms. Borsay isn't aware of what is collected. So</p> <p>7 I -- I don't believe that any user can be aware of what</p> <p>8 Google is collecting.</p> <p>9 Q. BY MS. TREBICKA: Do you believe that some users</p> <p>10 may be aware of some of the data that Google collects but 12:19:47</p> <p>11 not other pieces, while they're in private browsing mode?</p> <p>12 A. I -- maybe some -- some people might suspect</p> <p>13 that there's collection, but I don't think that they</p> <p>14 could be aware, because I don't think it's published</p> <p>15 anywhere. So I don't know how they could be aware of 12:20:10</p> <p>16 what they collect.</p> <p>17 Q. What do you mean by "might suspect that there is</p> <p>18 collection"?</p> <p>19 A. Well, people -- I mean, certainly there's press</p> <p>20 from this case right now that's out there. So people 12:20:26</p> <p>21 know that something is going on here. People may just be</p> <p>22 paying attention to that, and so they might suspect</p> <p>23 something is going on. But they cannot be aware of what</p> <p>24 is going on, in my opinion.</p> <p>25 Q. So in your opinion, would users know, for 12:21:16</p> <p style="text-align: right;">Page 47</p>	<p>1 their -- things about them in order to personalize their</p> <p>2 experience when using Google products?</p> <p>3 A. I mean, I think if I'm understanding the</p> <p>4 question correctly, you're asking me about what a user</p> <p>5 would think when they go into Incognito mode.. 12:24:51</p> <p>6 And, I mean, I'm just looking at my report, and</p> <p>7 it says, "Chrome won't save the following information:</p> <p>8 Your browser history, cookies and site data/information</p> <p>9 entered into forms."</p> <p>10 And so if you were to read -- if you were a user 12:25:06</p> <p>11 and you were to read that definition, it would seem like</p> <p>12 you would not be aware that they're actually using</p> <p>13 information to personalize your web browsing history.</p> <p>14 Q. Okay.</p> <p>15 A. And I -- I'll also say that, you know, I read a 12:25:22</p> <p>16 lot of the emails that were in this case, and it seems</p> <p>17 like the Google people also understand that people don't</p> <p>18 have an understanding of what is being collected. And</p> <p>19 their -- their expectations or awareness is different</p> <p>20 than what Google Incognito mode actually does. 12:25:48</p> <p>21 MS. TREBICKA: Let me mark as Exhibit 3 --</p> <p>22 (Exhibit 3, GOOG-CABR-04431207 - 271, marked for</p> <p>23 identification electronically by counsel.)</p> <p>24 MS. TREBICKA: -- a Google document, which is</p> <p>25 Tab 3 for tag purposes, with the Bates label 12:25:57</p> <p style="text-align: right;">Page 49</p>

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<p>1 points that we've just gone through.</p> <p>2 Q. Did you identify any other data points that you</p> <p>3 decided not to include in your report?</p> <p>4 A. I may have, but I can't recall as I sit here. I</p> <p>5 can't recall any other data points. 16:24:15</p> <p>6 Q. Now, moving on to allocation of the restitution</p> <p>7 damages that you calculate, you propose two possible</p> <p>8 methods to allocate restitution damages in paragraph 197</p> <p>9 of your report; correct?</p> <p>10 A. That is correct. 16:25:10</p> <p>11 Q. One refers to -- or one method uses the number</p> <p>12 of UMPBI attributable to each class member; correct?</p> <p>13 A. Yes, it does.</p> <p>14 Q. And UMPBI stands for?</p> <p>15 A. Unique monthly private browsing instances. 16:25:26</p> <p>16 Q. And the other method is according to the number</p> <p>17 of class members or putative class members now; correct?</p> <p>18 A. I know that we're switching topics, and I know</p> <p>19 that this is short, but I have to quickly use the</p> <p>20 restroom. I'm sorry about this. I just -- it can 16:25:45</p> <p>21 literally be less than five minutes.</p> <p>22 Q. It's all right.</p> <p>23 A. Okay.</p> <p>24 THE VIDEOGRAPHER: Going off the record at</p> <p>25 4:26 p.m. 16:25:56</p> <p style="text-align: right;">Page 138</p>	<p>1 MS. TREBICKA: I have a question for the</p> <p>2 witness. I think I need the witness to answer.</p> <p>3 MR. LEE: Okay. So you're not going to answer</p> <p>4 my question?</p> <p>5 MS. TREBICKA: We can take it up after, not on 16:31:26</p> <p>6 the record.</p> <p>7 MR. LEE: All right. Let me object based on the</p> <p>8 sanction order then.</p> <p>9 THE WITNESS: So my understanding is that not --</p> <p>10 that data is not available to -- for the entire class. 16:31:40</p> <p>11 Q. BY MS. TREBICKA: Do you have an understanding</p> <p>12 of how it can be --</p> <p>13 A. Can I finish or --</p> <p>14 Q. Oh, I didn't know you were not finished. With</p> <p>15 the long pauses, it's making it hard for me know to when 16:31:52</p> <p>16 you're finished.</p> <p>17 Go ahead.</p> <p>18 A. I appreciate that comment. Thank you.</p> <p>19 So my understanding is that data is not</p> <p>20 available, and so I have not attempted to do it. 16:32:08</p> <p>21 Q. Do you know whether -- well, how do you propose</p> <p>22 that it be done, given that this is one of your</p> <p>23 methodologies?</p> <p>24 A. So to the extent that Google produces the data,</p> <p>25 one could calculate the number of unique private browsing 16:32:49</p> <p style="text-align: right;">Page 140</p>
<p>1 (Recess.)</p> <p>2 THE VIDEOGRAPHER: We are back on the record at</p> <p>3 4:30 p.m.</p> <p>4 Q. BY MS. TREBICKA: Okay. Mr. Lasinski, you</p> <p>5 propos two possible methods to allocate restitution 16:29:50</p> <p>6 damages; correct?</p> <p>7 A. I do, yes.</p> <p>8 Q. And we briefly touched on them before the break;</p> <p>9 correct?</p> <p>10 A. I believe that we talked about UMPBI. 16:30:01</p> <p>11 Q. The other method is according to the number of</p> <p>12 class members?</p> <p>13 A. Yes, it is.</p> <p>14 Q. And is one of them preferable to the other, in</p> <p>15 your opinion? 16:30:29</p> <p>16 A. I have not provided a preference.</p> <p>17 Q. Have you calculated the number of UMPBI deemed</p> <p>18 attributable to each class member?</p> <p>19 A. You mean for the entire class, have I calculated</p> <p>20 the number of UMPBI of each individual class member? 16:30:56</p> <p>21 Q. Right, attributable to each class member.</p> <p>22 MR. LEE: Let me object subject to the Court's</p> <p>23 sanction order for Google's discovery misconduct.</p> <p>24 Are you representing that that data has been</p> <p>25 produced, Counsel? 16:31:14</p> <p style="text-align: right;">Page 139</p>	<p>1 instances for the class members. Another way one could</p> <p>2 do it if that data is not available or only partially</p> <p>3 available would be through attestation. Class members</p> <p>4 could attest what they did over the -- over the period.</p> <p>5 But to be clear, I'm not -- I'm not the 16:33:22</p> <p>6 administrator in this case. Those are two ways that seem</p> <p>7 reasonable to me to do this calculation, but again, I'm</p> <p>8 not the administrator, so I'm not sure exactly how they</p> <p>9 would do it.</p> <p>10 Q. So how it would be done is not part of your 16:33:39</p> <p>11 opinion; correct?</p> <p>12 MR. LEE: Objection to form, mischaracterizes</p> <p>13 paragraph 197.</p> <p>14 THE WITNESS: I just provided two ways that it</p> <p>15 could be done or a combination of those ways, but my 16:33:50</p> <p>16 understanding is that at some point there will be an</p> <p>17 administrator and they will determine how to -- how to do</p> <p>18 this if UMPBI is selected as the correct method.</p> <p>19 Q. BY MS. TREBICKA: And you, sitting here today,</p> <p>20 do not have an opinion on how to do this if UMPBI is 16:34:16</p> <p>21 selected as the correct method?</p> <p>22 MR. LEE: Objection subject to the Court's</p> <p>23 sanction order for Google's discovery misconduct.</p> <p>24 THE WITNESS: I mean, again, I have two -- as I</p> <p>25 sit here, I haven't -- I mean, I have ways that it could 16:34:31</p> <p style="text-align: right;">Page 141</p>

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<p>1 be done. I mean, it could be done -- if Google produces 2 the information, it could be done that way. If Google 3 doesn't produce the information or it produces only a 4 portion of the information, it could be done through 5 attestation. Those are two ways that it could be done -- 16:34:50 6 Q. BY MS. TREBICKA: And this is -- 7 A. -- to get this -- to get the information 8 necessary to do it this way. 9 Q. This is your opinion, that it can be done 10 through attestations? 16:35:02 11 A. That seems like a reasonable way to do it, to 12 the extent that the information isn't available from 13 Google. 14 Q. Do either of your two methodologies propose 15 allocation of restitution damages in proportion to the 16:35:23 16 amount of at issue data that Google collected from each 17 class member? 18 A. Yes. 19 Q. Which one? 20 A. So UPM -- UMPBI would consider the amount of 16:35:56 21 information collected by Google. It obviously -- 22 obviously considers use, and so, therefore, the amount of 23 information that was collected. 24 Q. So in your opinion, there's a direct 25 relationship between use and the amount of relationship 16:36:26 Page 142</p>	<p>1 get one UMPBI. If you logged on twice in two consecutive 2 months, you'd get two, so it's got -- it considers use. 3 Q. But in any given month, you are provided one 4 UMPBI whether you logged on just once for five minutes or 5 every single day for the entire month; correct? 16:38:54 6 A. Correct. 7 Q. So in your opinion, do you believe there is a 8 direct relationship between the number of UMPBI 9 attributable to each class member and the amount of at 10 issue data Google collected from each class member? 16:39:32 11 A. I'm not sure if there is a direct relationship 12 between UMPBI and the amount on an individual basis. 13 However, how that user is treated and -- and the 14 information that Google is able to obtain on a user, 15 whether or not they spent a long time or a short time, 16:40:16 16 which is what I think you're asking here, is important to 17 Google, and, therefore, using this measurement of use is 18 an appropriate measure for allocation. 19 We also see -- we also see this measure of 20 allocation -- you know, this measure used in the 16:40:37 21 marketplace, like what we've been talking about earlier. 22 People pay, including Google through its Ipsos study, a 23 flat monthly rate per device. 24 Q. But you also testified earlier that Google is -- 25 that in your understanding at least, Google is not able 16:41:27 Page 144</p>
<p>1 -- of data that was collected? 2 A. Yes, there is. 3 Q. What is your opinion based on? 4 A. My discussions with Mr. Hochman. 5 Q. What is -- 16:36:42 6 A. So my -- go ahead, please. 7 Q. No. If you haven't finished your answer, please 8 go ahead. 9 A. So we've talked about this earlier today. My 10 discussions with Mr. Hochman are that when you 16:36:59 11 calculate -- when Google collects information from users 12 about their browsing history, that's valuable to Google. 13 Knowing that they're on for a long time or a short time 14 or that type of information is very valuable -- very 15 valuable to Google, and so they value that information. 16:37:33 16 And a monthly browser instance, or in this case 17 a unique monthly browser instance, is an appropriate way 18 to consider that value to Google and an appropriate way 19 to apportion it, because it considers use by the class 20 member. 16:38:07 21 Q. UMPBI does not measure use, however; correct? 22 A. No, that's incorrect. 23 Q. In your view, UMPBI measures use? 24 A. It does. I mean, you have to log on each month 25 to get a UMPBI, so if you only logged on once, you'd only 16:38:24 Page 143</p>	<p>1 to link to separate private browsing sessions for a 2 logged-out user to each other, correct, if the user logs 3 out after every single browsing session? 4 MR. LEE: Mischaracterizes. Objection. 5 THE WITNESS: I did not -- I did not testify to 16:41:52 6 that. You asked -- I believe that you asked me a 7 question could they link that, and I said that it's not 8 necessary for my damages calculation -- for my 9 restitution calculation to assume -- to have assumed 10 that. 16:42:09 11 Q. BY MS. TREBICKA: So for purposes of your 12 restitution calculation, you did not assume that Google 13 is able to link two separate private browsing sessions; 14 correct? 15 A. No, that's not correct. 16:42:31 16 Q. What is not correct about it? 17 A. Well, so my understanding is that they would be 18 able to link two private browsing sessions, so long as 19 they came from the client -- from the same device. 20 So I think what you are trying to get at is do 16:42:53 21 I -- have I double-counted, you know, unique monthly 22 browsing instances, and my understanding is that I have 23 not, that they can -- if there are two or three or four 24 or five browsing instances in a month, that they can say 25 that those browsing instances came from the same device. 16:43:13 Page 145</p>

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<p>1 Q. And your answer was it is not very difficult to</p> <p>2 perform that calculation. Do you recall that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. What is your answer that it is not, and I quote,</p> <p>5 "very difficult to perform that calculation" based on? 20:26:40</p> <p>6 A. Well, if you had unique monthly browsing</p> <p>7 instances -- private browsing instances by class member</p> <p>8 and that data were -- as an example, were produced, then</p> <p>9 you would know that -- I mean, you would know that</p> <p>10 information with certainty, because you could determine 20:26:58</p> <p>11 unique monthly private browsing instances by class</p> <p>12 member.</p> <p>13 Q. So you're -- when you were answering counsel's</p> <p>14 question, you were relying on a type of data which</p> <p>15 identifies the private browsing instances by class 20:27:18</p> <p>16 member; correct?</p> <p>17 A. I thought that that was the question is if that</p> <p>18 were available by class member, yes, then you could do</p> <p>19 that calculation.</p> <p>20 MS. TREBICKA: Okay. No further questions. 20:27:47</p> <p>21 MR. LEE: All right. We didn't have to fight.</p> <p>22 MS. TREBICKA: Yeah, that's true.</p> <p>23 THE REPORTER: Off the record, Counsel?</p> <p>24 MS. TREBICKA: Yes.</p> <p>25 THE VIDEOGRAPHER: We are off the record at 20:27:58</p> <p style="text-align: right;">Page 222</p>	<p>1 I declare under the penalty of perjury under the</p> <p>2 laws of the State of California that the foregoing is</p> <p>3 true and correct.</p> <p>4 Executed on _____, 2022, at</p> <p>5 _____, _____.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 224</p>
<p>1 8:28 p.m., and this concludes today's testimony given by</p> <p>2 Michael Lasinski. The total number of media used was one</p> <p>3 and will be retained by Veritext Legal Solutions.</p> <p>4 (Time Noted: 8:28 p.m.)</p> <p>5 --oOo--</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 223</p>	<p>1 STATE OF CALIFORNIA) ss:</p> <p>2 COUNTY OF MARIN)</p> <p>3</p> <p>4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do</p> <p>5 hereby certify:</p> <p>6 That the foregoing deposition testimony was</p> <p>7 taken before me at the time and place therein set forth</p> <p>8 and at which time the witness was administered the oath;</p> <p>9 That testimony of the witness and all objections</p> <p>10 made by counsel at the time of the examination were</p> <p>11 recorded stenographically by me, and were thereafter</p> <p>12 transcribed under my direction and supervision, and that</p> <p>13 the foregoing pages contain a full, true and accurate</p> <p>14 record of all proceedings and testimony to the best of my</p> <p>15 skill and ability.</p> <p>16 I further certify that I am neither counsel for</p> <p>17 any party to said action, nor am I related to any party</p> <p>18 to said action, nor am I in any way interested in the</p> <p>19 outcome thereof.</p> <p>20 IN WITNESS WHEREOF, I have subscribed my name</p> <p>21 this 2nd day of August, 2022.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 225</p>

EXHIBIT 39

LATHAM & WATKINS LLP

LATHAM ADVISES CONSORTIUM ON LANDMARK ACQUISITION OF CHELSEA FOOTBALL CLUB

£4.25 billion transaction represents one of the largest sports M&A deals in history.

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*In cooperation with the Law Firm of Salman M. Al-Sudairi LLC

**Exhibit
0015**

7/20/2022
Michael Lasinski

EXHIBIT 40

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

---o0o---

CHASOM BROWN, et al.,)
on behalf of themselves and)
all others similarly)
situated,)
)
 Plaintiffs,)Case No.
)4:20-cv-03664-YGR-SVK
vs.)
)
GOOGLE LLC,)
)
)
 Defendant.)
_____)

---o0o---

Videotaped Zoom Deposition of
STEVEN WEISBROT
Tuesday, August 2, 2022

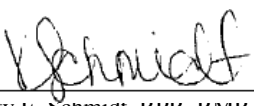
---o0o---

Katy E. Schmidt
RPR, RMR, CRR, CSR 13096
Veritext Job No.: 5345799

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE NORTHERN DISTRICT OF CALIFORNIA 3 OAKLAND DIVISION 4 ---o0o--- 5 CHASOM BROWN, et al.,) on behalf of themselves and) 6 all others similarly) situated,) 7) Plaintiffs,)Case No. 8)4:20-cv-03664-YGR-SVK vs.) 9) GOOGLE LLC,) 10) Defendant.) 11 _____) 12 BE IT REMEMBERED that, pursuant to Notice, 13 and on Tuesday, the 2nd day of August, 2022, 14 commencing at the hour of 9:32 a.m., thereof, in 15 Parkland, Florida, before me, KATY E. SCHMIDT, a 16 Certified Shorthand Reporter in and for the County of 17 Yolo, State of California, there virtually personally 18 appeared 19 20 STEVEN WEISBROT 21 called as a witness herein, who, being by me first 22 duly sworn, was thereupon examined and interrogated as 23 hereinafter set forth. 24 25</p> <p style="text-align: right;">Page 2</p>	<p>1 INDEX OF EXAMINATION 2 ---o0o--- 3 Page 4 Examination by Ms. Olson 08 5 Examination by Mr. Yanchunis 79 6 Examination by Ms. Olson 87 7 Examination by Mr. Yanchunis 89 8 9 ---o0o--- 10 11 QUESTIONS INSTRUCTED NOT TO ANSWER 12 13 Page Line 14 15 (NOTHING OFFERED.) 16 17 ---o0o--- 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 4</p>
<p>1 APPEARANCES: 2 For The Brown Plaintiffs: 3 (Appeared via Zoom) 4 MORGAN & MORGAN BY: JOHN YANCHUNIS, Esq. 5 BY: RYAN MCGEE, Esq. 201 North Franklin Street, Suite 700 6 Tampa, Florida 33602 813.223.0931 7 jyanchunis@forthepeople.com 8 (Appeared via Zoom) 9 BOIES SCHILLER FLEXNER LLP BY: MARK MAO, Esq. 10 BY: ALISON ANDERSON, Esq. 44 Montgomery Street, 41st Floor 11 San Francisco, California 94104 415.293.6800 12 mmao@bsflp.com 13 For the Calhoun Plaintiffs: 14 (Appeared via Zoom) 15 BLEICHMAR FONTI & AULD LLP BY: ANGELICA M. ORNELAS, Esq. 16 555 12th Street, Suite 1600 Oakland, California 94607-3616 17 aornelas@bfalaw.com 18 For The Defendants: 19 (Appeared via Zoom) 20 QUINN EMANUEL URQUHART & SULLIVAN LLP BY: ALY G. OLSON, Esq. 21 BY: STEPHEN BROOME, Esq. 865 S Figueroa Street, Floor 10 22 Los Angeles, California 90017-5003 213.443.3000 23 stephenbroome@quinnemanuel.com 24 Also present: 25 Sean Grant, Videographer ---o0o---</p> <p style="text-align: right;">Page 3</p>	<p>1 INDEX OF EXHIBITS 2 ---o0o--- 3 Page 4 Exhibit 1 Document: Expert Report 23 of Steven Weisbrot, Esq. 5 6 Exhibit 2 Document: Claim Forms 80 7 8 Exhibit 3 Document: Google+ Claim Form 84 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 5</p>

<p>1 A. If you want to explain to me what it is, 11:11</p> <p>2 there's a chance that I know it by another term of 11:11</p> <p>3 art, but I don't want to say I'm not using it without 11:11</p> <p>4 understanding what I'm saying I'm not using. 11:11</p> <p>5 Q. Sure. 11:11</p> <p>6 Are you planning to use IP addresses and 11:11</p> <p>7 user agents of claimants in order to identify putative 11:11</p> <p>8 class members or verify claims of putative class 11:11</p> <p>9 members? 11:11</p> <p>10 A. I actually suspected that's what you were 11:11</p> <p>11 referring to, but I didn't want to jump in and say, 11:11</p> <p>12 hey, one way or another. But, no, we will not. 11:11</p> <p>13 That's not something we would use to identify class 11:12</p> <p>14 members. 11:12</p> <p>15 Q. And is it something you intend to use to 11:12</p> <p>16 verify class membership or claims submitted by class 11:12</p> <p>17 members? 11:12</p> <p>18 A. No. The reason -- the reason I made that 11:12</p> <p>19 sort of distinction is we do look at IPs in a 11:12</p> <p>20 different context and that's in the context of 11:12</p> <p>21 identifying potential fraud. If we're seeing a 11:12</p> <p>22 tremendous amount of claims filed from one IP address, 11:12</p> <p>23 well, that's going to trigger a manual review on our 11:12</p> <p>24 part to see what's going on there. That's all I was 11:12</p> <p>25 getting at. 11:12</p> <p style="text-align: right;">Page 70</p>	<p>1 affected people because they would be prohibited from 11:13</p> <p>2 bringing that forth, or affected accounts, or whatever 11:13</p> <p>3 the term of art might be. 11:13</p> <p>4 Q. But sitting here today, as of today, you are 11:14</p> <p>5 not proposing that Google engage in any analysis to 11:14</p> <p>6 confirm class membership? 11:14</p> <p>7 A. I am merely saying that we've worked with 11:14</p> <p>8 Google in similar situations before and we could 11:14</p> <p>9 administer this case and administer it well without a 11:14</p> <p>10 need for some cross-check of verification based on 11:14</p> <p>11 records. 11:14</p> <p>12 Would I prefer to have them if they weren't 11:14</p> <p>13 prohibited from being used? Sure. I think that's 11:14</p> <p>14 fine. But we can still do it without them. 11:14</p> <p>15 Q. So is it your understanding that the 11:15</p> <p>16 records -- that Google is prohibited from using 11:15</p> <p>17 records to verify class membership? 11:15</p> <p>18 A. I think the challenge claims verification 11:15</p> <p>19 was something more accurate. But I don't have the 11:15</p> <p>20 order in front of me, but it was pretty clear. 11:15</p> <p>21 Q. So you don't have a proposal sitting here 11:15</p> <p>22 today for Google to engage in analysis to confirm the 11:15</p> <p>23 amount of data Google received per claimant; correct? 11:15</p> <p>24 A. I don't understand the term "amount of data" 11:16</p> <p>25 in that context. 11:16</p> <p style="text-align: right;">Page 72</p>
<p>1 Q. I see. 11:12</p> <p>2 So you may use IP addresses to detect 11:12</p> <p>3 potential fraud in terms of a bot submitting a claim. 11:12</p> <p>4 Is that -- 11:12</p> <p>5 A. Exactly. That's right. 11:12</p> <p>6 Q. Any other situations where you would use 11:12</p> <p>7 IP address to identify potential fraud? 11:12</p> <p>8 A. Yeah. I think I mentioned it in my report 11:12</p> <p>9 as well. If we notice IP addresses switching mid 11:13</p> <p>10 claim, that can sometimes be indicative of fraud and 11:13</p> <p>11 that would come up on our IP logs and would get a 11:13</p> <p>12 second look. 11:13</p> <p>13 But, again, it would never be used to verify 11:13</p> <p>14 claimant information, which I believe was your initial 11:13</p> <p>15 question. 11:13</p> <p>16 Q. Just to confirm, so you're not proposing 11:13</p> <p>17 that Google engage in any analysis to confirm class 11:13</p> <p>18 membership here? 11:13</p> <p>19 A. Oh, that's not what I'm saying at all. If 11:13</p> <p>20 they have a way to do it that I'm not privy to, 11:13</p> <p>21 certainly we're willing to take a look at that. 11:13</p> <p>22 What I'm saying is my understanding, based 11:13</p> <p>23 on the sanctions order, is that they -- is that they 11:13</p> <p>24 can't -- they can't challenge claims verification 11:13</p> <p>25 based on whether or not they have some sort of list of 11:13</p> <p style="text-align: right;">Page 71</p>	<p>1 Q. For example, if Google received one URL 11:16</p> <p>2 versus if Google received a thousand URLs. 11:16</p> <p>3 A. It's my understanding that they're 11:16</p> <p>4 prohibited from using that information in th claims 11:16</p> <p>5 verification process. 11:16</p> <p>6 Q. And so you don't intend to use it for the 11:16</p> <p>7 claims verification process? 11:16</p> <p>8 A. If it's not available to me, because of the 11:16</p> <p>9 order, I can't use it. 11:16</p> <p>10 Q. And if it is available to you, do you intend 11:16</p> <p>11 to use it? 11:16</p> <p>12 A. If it were available to me and that was part 11:16</p> <p>13 of either a negotiated settlement or an order, I would 11:16</p> <p>14 be pleased to use it. 11:16</p> <p>15 Q. Let's turn to paragraph 77. And I believe 11:17</p> <p>16 this is what we were discussing before, fraud 11:18</p> <p>17 prevention measures using an IP address. 11:18</p> <p>18 The -- so in paragraph 77, you say: 11:18</p> <p>19 "Other fraud prevention measures 11:18</p> <p>20 that we typically apply include: 11:18</p> <p>21 IP Duplication Detection." 11:18</p> <p>22 Do you see that? 11:18</p> <p>23 A. I do. And you're right. That is what we 11:18</p> <p>24 were just previously discussing. 11:18</p> <p>25 Q. How does that work? 11:18</p> <p style="text-align: right;">Page 73</p>

<p>1 A. We are aware of and log the IP addresses 11:18</p> <p>2 that are visiting the dedicated case website and we 11:18</p> <p>3 derive reports of those. And my technology team is 11:18</p> <p>4 able to flag instances when -- where initial fraud, 11:18</p> <p>5 like IP duplication, requires further review and then 11:18</p> <p>6 hands that off to the claims review team to take a 11:18</p> <p>7 look at those particular instances. 11:19</p> <p>8 Q. And does the dedicated website notify users 11:19</p> <p>9 that you will be collecting their IP address? 11:19</p> <p>10 A. I believe our privacy policy that's on all 11:19</p> <p>11 of them does notify them, but... 11:19</p> <p>12 Q. When a claim is submitted with the same IP 11:19</p> <p>13 address, are they automatically excluded from the 11:19</p> <p>14 process? 11:19</p> <p>15 A. They are not. There's a lot about reasons 11:19</p> <p>16 that multiple -- that a single IP address could have 11:19</p> <p>17 multiple claimants. 11:19</p> <p>18 What we're really looking for when it's -- 11:19</p> <p>19 is at scale, when there's a hundred, 200, a thousand, 11:20</p> <p>20 more than that, coming from the same IP address. 11:20</p> <p>21 If two or three people from the same IP 11:20</p> <p>22 address, that could -- there's a million -- million 11:20</p> <p>23 may be an overstatement. There's multiple reasons 11:20</p> <p>24 that could happen. It could be -- you know, it could 11:20</p> <p>25 be the same household. It could be a computer lab. 11:20</p> <p style="text-align: right;">Page 74</p>	<p>1 (Break taken in proceedings.) 11:21</p> <p>2 THE VIDEOGRAPHER: Back on the record. The 11:31</p> <p>3 time is 2:31 p.m. 11:31</p> <p>4 BY MS. OLSON: 11:31</p> <p>5 Q. What is your proposal for determining how 11:31</p> <p>6 much each claim -- claimant will receive? 11:31</p> <p>7 A. Again, it's so often a negotiated point 11:31</p> <p>8 between counsel. That depends on so many things. 11:31</p> <p>9 I do not independently come up typically 11:31</p> <p>10 with a damages model. I implemented them as well, so 11:31</p> <p>11 I don't have a proposal as to how it will be done. 11:31</p> <p>12 I'm giving certain inputs and I make sure that it's 11:31</p> <p>13 done properly and that the math checks out and that 11:31</p> <p>14 people get what they are entitled to under whatever 11:32</p> <p>15 the operative document may be, whether it's a 11:32</p> <p>16 settlement agreement or a court order. 11:32</p> <p>17 Q. I believe you testified at the beginning of 11:32</p> <p>18 the deposition today that you had reviewed 11:32</p> <p>19 Mr. Lasinski's deposition transcript. 11:32</p> <p>20 Is that right? 11:32</p> <p>21 A. That's correct. 11:32</p> <p>22 Q. Are you aware that he's proposed using 11:32</p> <p>23 unique monthly private browsing instances in order to 11:32</p> <p>24 determine how much claimants will receive? 11:32</p> <p>25 A. That wasn't my exact recollection but if 11:32</p> <p style="text-align: right;">Page 76</p>
<p>1 It could be the New York Public Library. I mean, 11:20</p> <p>2 there are instances where IP addresses, it would make 11:20</p> <p>3 sense for them to have multiple claims. 11:20</p> <p>4 But thousands of claims -- and even when 11:20</p> <p>5 they are thousands of claims, they're not 11:20</p> <p>6 automatically excluded. They're flagged for manual 11:20</p> <p>7 review to determine whether or not they should be 11:20</p> <p>8 excluded. 11:20</p> <p>9 Q. And the next bullet point is "IP Switching 11:20</p> <p>10 Detection." 11:20</p> <p>11 Do you see that? 11:20</p> <p>12 A. Right. Yes. 11:20</p> <p>13 Q. Why do you find it important to flag whether 11:20</p> <p>14 a claimant is trying to avoid a static IP capture? 11:20</p> <p>15 A. Because my technology team has explained to 11:20</p> <p>16 me that's kind of like a criminal trying to cover 11:21</p> <p>17 their tracks, and that in their estimation, it's worth 11:21</p> <p>18 a manual review. 11:21</p> <p>19 MS. OLSON: Why don't we take another 11:21</p> <p>20 10-minute break and I'll just -- I'm finishing up so I 11:21</p> <p>21 just want to kind of look through my notes and make 11:21</p> <p>22 sure. 11:21</p> <p>23 THE WITNESS: Sure. 11:21</p> <p>24 THE VIDEOGRAPHER: Going off the record. 11:21</p> <p>25 The time is 2:21 p.m. 11:21</p> <p style="text-align: right;">Page 75</p>	<p>1 that's what you're proffering, I'll accept that. 11:32</p> <p>2 Q. Okay. Assuming that is the accepted damages 11:32</p> <p>3 model wayed on unique monthly private browsing 11:32</p> <p>4 instances, how would you implement that in the claims 11:32</p> <p>5 administration process? 11:32</p> <p>6 A. It would largely -- it would largely be 11:32</p> <p>7 specific to the documentation that I was able to 11:32</p> <p>8 receive in a particular class. Speaking of that in 11:33</p> <p>9 the abstract doesn't make -- doesn't make sense. I 11:33</p> <p>10 couldn't tell you how I would implement it without 11:33</p> <p>11 looking at what I had to start with. 11:33</p> <p>12 And whether that be self-identification, 11:33</p> <p>13 then we would -- we would accept what was on the 11:33</p> <p>14 self-identification. 11:33</p> <p>15 If for some reason Google was able to 11:33</p> <p>16 provide information despite the order that allowed us 11:33</p> <p>17 to monitor that, we would implement -- we would 11:33</p> <p>18 implement it based on what was provided to us. 11:33</p> <p>19 We also -- just to sort of put a little 11:33</p> <p>20 context around that, we are often in a situation where 11:33</p> <p>21 people can self-identify the amount of products they 11:33</p> <p>22 bought, for instance, and therefore that changes what 11:33</p> <p>23 their damages -- what damages they would be entitled 11:33</p> <p>24 to under a settlement agreement. 11:33</p> <p>25 And we always have specifications that if 11:33</p> <p style="text-align: right;">Page 77</p>

<p>1 MS. OLSON: Objection to form. 11:54</p> <p>2 THE WITNESS: Yes. That's right. 11:54</p> <p>3 MR. YANCHUNIS: Thank you. 11:54</p> <p>4 I have no further questions. 11:54</p> <p>5 MS. OLSON: Okay. Nothing more from me. 11:54</p> <p>6 THE WITNESS: Thank you, everyone. 11:54</p> <p>7 THE VIDEOGRAPHER: This concludes today's 11:54</p> <p>8 videotaped deposition of Stephen Weisbrot. We are off 11:54</p> <p>9 the record at 2:55 p.m. 11:54</p> <p>10 Thank you. 11:55</p> <p>11 THE COURT REPORTER: Thank you, Counsel. 11:55</p> <p>12 Are we going with the standard orders today? 11:55</p> <p>13 MS. OLSON: No. I think we need the 11:55</p> <p>14 transcript tomorrow, if possible. 11:55</p> <p>15 THE COURT REPORTER: Yes. That was my 11:55</p> <p>16 understanding. 11:55</p> <p>17 MS. OLSON: Okay. Then yes. 11:55</p> <p>18 MR. YANCHUNIS: We'll take the same. 11:55</p> <p>19 THE COURT REPORTER: Okay. And I was also 11:55</p> <p>20 told a rough draft today? 11:55</p> <p>21 MS. OLSON: Yes, please. 11:55</p> <p>22 THE COURT REPORTER: Same for plaintiffs? 11:55</p> <p>23 MR. YANCHUNIS: Same here. 11:55</p> <p>24 THE COURT REPORTER: Okay. Sounds good. 11:55</p> <p>25 Does anybody need anything from me? 11:55</p> <p style="text-align: right;">Page 90</p>	<p>1 REPORTER'S CERTIFICATE</p> <p>2 ---o0o---</p> <p>3 STATE OF CALIFORNIA)</p> <p style="text-align: center;">) ss.</p> <p>4 COUNTY OF YOLO)</p> <p>5 I, KATY E. SCHMIDT, a Certified Shorthand</p> <p>6 Reporter in and for the State of California, duly</p> <p>7 commissioned and a disinterested person, certify:</p> <p>8 That the foregoing deposition was taken before</p> <p>9 me at the time and place herein set forth;</p> <p>10 That STEVEN WEISBROT, the deponent herein, was</p> <p>11 put on oath by me;</p> <p>12 That the testimony of the witness and all</p> <p>13 objections made at the time of the examination were</p> <p>14 recorded stenographically by me to the best of my</p> <p>15 ability and thereafter transcribed into typewriting;</p> <p>16 That the foregoing deposition is a record of</p> <p>17 the testimony of the examination.</p> <p>18 IN WITNESS WHEREOF, I subscribe my name on this</p> <p>19 3rd day of August, 2022.</p> <p>20</p> <p>21 </p> <p>22</p> <p>23 Katy E. Schmidt, KPK, RMR, CRR, CSR 13096</p> <p>24 Certified Shorthand Reporter in and for the</p> <p>25 County of Sacramento, State of California</p> <p style="text-align: right;">Page 92</p>
<p>1 MR. MCGEE: Sorry. This is Ryan. We just 11:55</p> <p>2 wanted to make sure that it was -- 11:55</p> <p>3 THE COURT REPORTER: Read and sign? 11:55</p> <p>4 MR. MCGEE: Yes, ma'am. 11:55</p> <p>5 THE COURT REPORTER: Okay. And this is 11:55</p> <p>6 attorney's eyes only? 11:55</p> <p>7 MR. MCGEE: I don't think, Aly, there was 11:55</p> <p>8 anything confidential and his report wasn't 11:55</p> <p>9 confidential. 11:55</p> <p>10 MS. OLSON: Yeah. I don't think so. 11:56</p> <p>11 MR. MCGEE: So we can designate 11:56</p> <p>12 preliminarily confidential if you want, but I don't -- 11:56</p> <p>13 I don't think there's anything confidential. 11:56</p> <p>14 MS. OLSON: No. I don't think so. 11:56</p> <p>15 THE COURT REPORTER: Very good. Thank you, 11:56</p> <p>16 everyone. 11:56</p> <p>17 (Whereupon, the deposition adjourned at 11:56 a.m.)</p> <p>18 ---o0o---</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 91</p>	<p>1 JOHN YANCHUNIS, Esq.</p> <p>2 jyanchunis@forthepeople.com</p> <p>3 AUGUST 3, 2022</p> <p>4 RE: BROWN V. GOOGLE</p> <p>5 AUGUST 2, 2022, STEVEN WEISBROT, JOB NO. 5345799</p> <p>6 The above-referenced transcript has been</p> <p>7 completed by Veritext Legal Solutions and</p> <p>8 review of the transcript is being handled as follows:</p> <p>9 __ Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext</p> <p>10 to schedule a time to review the original transcript at</p> <p>11 a Veritext office.</p> <p>12 _X_ Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF</p> <p>13 Transcript - The witness should review the transcript and</p> <p>14 make any necessary corrections on the errata pages included</p> <p>15 below, notating the page and line number of the corrections.</p> <p>16 The witness should then sign and date the errata and penalty</p> <p>17 of perjury pages and return the completed pages to all</p> <p>18 appearing counsel within the period of time determined at</p> <p>19 the deposition or provided by the Code of Civil Procedure.</p> <p>20 __ Waiving the CA Code of Civil Procedure per Stipulation of</p> <p>21 Counsel - Original transcript to be released for signature</p> <p>22 as determined at the deposition.</p> <p>23 __ Signature Waived – Reading & Signature was waived at the</p> <p>24 time of the deposition.</p> <p>25</p> <p style="text-align: right;">Page 93</p>